

EXHIBIT A

MAR-01-2007 THU 10:18 AM CARNEGIE LTD

FAX NO. 212 843 8435

P. 01

Sloan Securities Corp.
444 Madison Avenue, 23rd Floor
New York, NY 10022

December 27, 2004

Drinks Americas Holdings, Ltd.
And Drinks Americas, Inc.
372 Danbury Road
Wilton, CT 06897
Attn: Bruce Klein, Chairman

Re: Investment Banking Agreement

Dear Bruce:

This letter confirms the agreement ("Agreement") of Drinks Americas, Inc. and its affiliated companies, (referred to herein as the "Company") to retain Sloan Securities Corp. ("SSC"), to provide during the Term (as hereinafter defined), the services described below.

1. Services. SSC agrees to perform such of the following financial advisory and investment banking services ("Services") as the Company reasonably and specifically requests:

1.1 Advisory Services. SSC will (i) familiarize itself to the extent it deems appropriate and feasible with the business, operations, properties, financial condition and prospects of the Company; (ii) advise the Company's management in corporate finance, structuring the nature, extent and other parameters of any transaction; and (iii) evaluate financial matters and assist in financial arrangements and investment banking transactions, including assistance and advice with regard to maximization of shareholder value. In consideration of such financial advisory services and as a material inducement for SSC to enter into this Agreement, the Company shall pay to SSC upon the closing of the Bridge Financing (as hereinafter defined) the sum of Thirty Five Thousand Dollars (\$35,000). The foregoing compensation shall be in addition to any other compensation and reimbursement of expenses described herein.

1.2 Financing. The Company is also engaging SSC, except as contemplated in Section 7.9 of this Agreement, on a exclusive basis to use its reasonable efforts to introduce the Company to corporations, partnerships, mutual funds, hedge funds, accredited investors, investment partnerships, securities firms, lending and other institutions and entities (collectively, if introduced by SSC "Entity or Entities") which may engage in or provide financing in the range of Six Million (\$6,000,000.00) Dollars to Ten Million (\$10,000,000.00) Dollars to the Company in the form of equity or equity-linked securities of the Company. The specific terms and conditions of the Financing shall ultimately be agreed to by the Company and the Entities after good faith negotiations, subject to market conditions. As used herein, the term

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"Entities" also means and includes any party, which is directly or indirectly connected with or related to one of the Entities described above including, without limitation, all affiliates as well as any referral from any of the Entities. The Financing will be made in accordance with the exemption from the registration requirements of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "Act") provided by Regulation D under the Act ("Regulation D") and the qualification and registration requirements of applicable state and foreign securities or blue sky laws and regulations. If requested by SSC, the Company will, at the closing of the Financing, furnish SSC with the same favorable opinion of its outside counsel as is furnished to the investors, addressed to SSC or together with a letter from such counsel that SSC may rely on its opinion as if directed to SSC. Such opinion will include customary items contained in legal opinions rendered in connection with Financing transactions, including, among other things, opinions on matters relating to organization and good standing, capitalization, corporate power and authority, and exemption of Financing. In addition, at the closing of the Financing, the Company will provide SSC with the same certificates of the officers of the Company as are furnished to the investors and such other certification, opinions and documents as SSC or its counsel may deem appropriate, in form and substance satisfactory to SSC and its counsel, including any updates of the Company's representations and warranties set forth herein. Prior to the consummation of the Financing, it is also contemplated that SSC shall use reasonable efforts to introduce the Company to Entities for the purposes of providing bridge financing (the "Bridge Financing") to the Company of up to \$550,000 on terms substantially set forth in the Bridge Term Sheet, attached hereto as Schedule B.

1.3 **Reasonable Efforts.** SSC agrees to devote such time and effort to the affairs of the Company as is reasonable and adequate to render the Services contemplated by this agreement. The Company understands and agrees that SSC shall not be responsible for the performance of any services which may be rendered hereunder without the Company providing the necessary information in writing prior thereto, nor shall SSC include any services that constitute the rendering of any legal opinions or performance of work that is in the ordinary purview of the Certified Public Accountant. SSC does not guarantee results on behalf of the Company, but shall pursue all reasonable avenues available through its network of contacts. At such time as an interest is expressed by a third party in the Company's needs, SSC shall notify the Company and advise it as to the source of such interest and any terms and conditions of such interest.

1.4 SSC's sole compensation in connection with the Financing and Bridge Financing shall be a "Financing Fee" (as set forth in Section 4 below) upon consummation of the applicable financing in any form with any Entity introduced by SSC to the Company.

1.5 The Company acknowledges that SSC's responsibilities shall be limited to the foregoing, and that SSC shall have no responsibility for fulfilling any reporting or filing requirements of the Company pursuant to applicable federal and state securities laws. In addition, the Company expressly acknowledges and agrees that SSC's obligations hereunder are on a reasonable best effort basis only and that the execution of this Agreement does not constitute a commitment by SSC to purchase the securities or any other securities of the

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_____, President
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Company and does not ensure the successful placement of the securities or any portion thereof.

2. Term

This Agreement shall take effect immediately upon execution and shall continue for an initial term of one hundred eighty (180) days ("Term"). Thereafter, the Agreement will terminate unless renewed by the parties in writing. Notwithstanding the expiration or termination of this Agreement, the indemnification, contribution, reimbursement and "tail" obligations of the Company shall survive and all previously paid fees (including, without limitation, any securities previously issued to SSC) shall be retained by SSC on a non-accountable basis.

3. Information

In connection with SSC's engagement hereunder, the Company will furnish SSC and any prospective Entity with any information concerning the Company that SSC reasonably deems appropriate and will provide SSC and prospective Entities with reasonable access to the Company's officers, directors, accountants, counsel and other advisors, subject to the Company's non-disclosure agreement. In addition, SSC shall be kept fully informed of any events that are reasonably likely to have a material effect on the financial condition of the Company. The Company represents and warrants to SSC that all such information concerning the Company and all private placement materials, whether in the form of a letter, circular, memorandum, notice or otherwise to be used in selling the securities ("Materials") will be true and accurate in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made. The Company acknowledges and agrees that SSC will not undertake any "due diligence" investigation and will be using and relying upon the information supplied by the Company and its officers, agents and others, the Materials, and any other publicly available information concerning the Company.

4. Fees

In consideration of SSC's services, SSC shall be entitled to receive, and the Company hereby agrees to pay to SSC, the following:

4.1 Financing Fees. (a) Unless otherwise provided herein, either (i) upon closing of a Financing, Entities introduced by SSC to the Company or (ii) upon rejection by the Company of a Financing by an Entity introduced by SSC that is ready, willing and able to consummate the Financing on terms the Company had previously agreed (a "Late Rejection"), SSC shall receive a Financing Fee payable by wire transfer or by other immediate available funds equal to 5% of the Financing Amount (as defined below), and shall be paid as proceeds are received by the Company from each Financing, or promptly following a Late Rejection. Any portion of SSC's Financing Fee that is attributable to proceeds to be received by the Company upon the occurrence of a future event, or the satisfaction of a contingency shall be paid when the

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President

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event occurs or the contingency is satisfied and the funds are received by the Company.. In addition to the foregoing, upon consummation of a Financing or promptly following a Late Rejection, the Company will issue to SSC and/or its designee(s) warrants (the "Warrants") to purchase such number of securities as shall be equal to 5% of the number of securities (including stock and warrants) issued to (or which would have been issued in the case of a Late Rejection) investors in the Financing at the same per share price or exercise price applicable to securities sold in the Financing. The Warrants shall be exercisable for a period of five years from the date of closing with an exercise price equal to the effective per price share paid by the Entities participating in the Financing. The terms of the Warrants shall be set forth in one or more agreements (the "Warrant Agreements") in form and substance reasonably satisfactory to SSC and the Company. The Warrant Agreements shall contain customary terms, including without limitation, provisions for change of control, corporate and full ratchet price protection anti dilution(except for compensatory stock options) and registration rights consistent with the registration rights granted to the Entities. In addition, the Company shall also be responsible for SSC's reasonable legal fees and expenses incurred in connection with any Financing or a Late Rejection not to exceed \$30,000 in the aggregate to be paid at the initial closing of the Financing or promptly following the Late Rejection.

(b) Unless otherwise provided herein, either (i) upon closing of a Bridge Financing with Entities introduced by SSC to the Company or (ii) a Late Rejection by the Company relating to a Bridge Financing by an Entity introduced to the Company by SSC, SSC shall receive a Financing Fee payable by wire transfer or by other immediate available funds equal to 10% of the Financing Amount (as defined below), and shall be paid as proceeds are received by the Company from each closing of the Bridge Financing, or promptly following a Late Rejection. Any portion of SSC's Financing Fee that is attributable to proceeds to be received by the Company upon the occurrence of a future event, or the satisfaction of a contingency shall be paid when the event occurs or the contingency is satisfied and the proceeds are received by the Company. In addition, the Company shall also be responsible for SSC's reasonable legal fees and expenses incurred in connection with the Bridge Financing or a Late Rejection not to exceed \$10,000 in the aggregate to be paid at the initial closing of the Financing or promptly following the Late Rejection.

(c) It is understood and agreed that to the extent the Company consummates any financing transaction within one year following the expiration or termination of this Agreement with an Entity or Entities introduced by SSC to the Company during the Term, the Company shall pay SSC upon the consummation of such financing a "tail" fee equal to the financing fees which would have otherwise been payable to SSC had such financing been consummated during the Term as described above. In furtherance of the foregoing, within fifteen business days following the expiration or termination of this Agreement SSC shall provide the Company with a written list of Entities introduced to the Company during the Term.

4.2 SSC's Financing Fee shall have been earned and shall be payable to SSC upon consummation of any Financing (or pursuant to a Late Rejection) which occurs during the term of this Agreement with Entities introduced by SSC to the Company. It is intended that

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, President

7.2 This Agreement may not be amended or modified except in writing signed by both parties to the Agreement.

7.3 All notices and other communications hereunder shall be deemed given upon (a) the sender's confirmation of receipt of a facsimile transmission to the recipient's facsimile number set forth below, (b) confirmed delivery by a standard overnight carrier to the recipient's address set forth below, or (c) delivery by hand to the recipient's address set forth below (or, in each case, to or at such other facsimile number or address for a party as such party may specify by notice given in accordance with this Section 7.3):

(a) If to the Company, to:

Drinks Americas Holdings, Ltd.
Drinks Americas, Inc.
372 Danbury Road
Wilton, CT 06897
Attn: Bruce Klein
Fax: (203) 762-8992

(b) If to SSC, to:

James C. Ackerman
Sloan Securities Corp.
Two Executive Drive
Fort Lee, NJ 07024
Fax: (201) 592-0695

7.5 SSC shall perform its services hereunder as an independent contractor and not as an employee of the Company or an affiliate thereof. It is expressly understood and agreed to by the parties hereto that SSC shall have no authority to act for, represent or bind the Company or any affiliate thereof in any manner, except as may be agreed to expressly by the Company in writing from time to time.

7.6 The Company hereby represents that it is a sophisticated business enterprise that has retained SSC for the limited purposes set forth in this letter, and the parties acknowledge and agree that their respective rights and obligations are contractual in nature. Each party disclaims an intention to impose fiduciary obligations on the other by virtue of the engagement contemplated by this letter.

7.7 Neither the execution and delivery of this Agreement by the Company nor the consummation of the transactions contemplated hereby will, directly or indirectly, with or without the giving of notice or lapse of time, or both: (i) violate any provisions of the Certificate of Incorporation or By-laws of the Company; or (ii) violate, or be in conflict with, or constitute default under, any agreement, lease, mortgage, debt or obligation of the Company or require the

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President

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payment, any pre-payment or other penalty with respect thereto. The Company has all requisite power and authority to enter into and perform its obligations under this Agreement. This Agreement has been duly executed and delivered and constitutes valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

7.8 In the event that other services are required and/or transactions which are the result of SSC's efforts that are not as contemplated herein, the parties hereto shall negotiate in good faith to determine a mutually acceptable level of compensation in such an eventuality.

7.9 SSC is aware that the Company will attempt to secure additional financing through debt or equity offerings, or otherwise. Such financing, if raised, will be used to repay the Bridge Financing and for working capital. In the event the Company is successful with these efforts, SS will not be entitled to compensation under this Agreement unless it had introduced the Entity that provided such financing to the Company. Notwithstanding the foregoing, the Company agrees that it will cease all efforts with respect to the foregoing on receipt of written notice by SSC that it expects to begin marketing efforts with respect to the Financing within the succeeding 14 days.

7.10 SSC acknowledges that the Company's shareholders have entered into a Exchange Agreement whereby, among other things, the Company will become a subsidiary of a public company named Gourmet Group, Inc. the Company's shareholders will acquire a majority interest in the public company (the "Reverse Acquisition") and Gourmet Group, Inc. will change its name to Drinks Americas Holdings, Ltd. ("Holdings"). Promptly after the closing of the Reverse Acquisition, the Company will cause Holdings to assume and reissue the Bridge Note described on Schedule B attached hereto and to execute this letter agreement on its own behalf. On execution of this letter by Holdings the defined term "Company" referred to in this Agreement will automatically become Drinks Americas Holdings, Ltd. and its affiliated companies.

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MAR-01-2007 THU 10:19/AM CARNEGIE LTD

FAX NO. 212-843 9435

P. 08

President

December 20, 2004

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If the foregoing is acceptable to you, please sign and return the enclosed copy of this letter to my attention.

Very truly yours,

SLOAN SECURITIES CORP.

By:

James C. Ackerman

Chief Executive Officer and President

AGREED AND ACCEPTED THIS
DAY OF DECEMBER, 2004:

DRINKS AMERICAS HOLDINGS, LTD.
DRINKS AMERICAS, Inc. .

By:

Bruce Klein, Chairman

PK023

EXHIBIT B

_____, President
December 20, 2004
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Schedule B

BRIDGE FINANCING TERM SHEET

Company:	Initially Drinks Americas' Inc. ("Drinks") to be assumed by Drinks Americas Holdings, Ltd. (the "Company") on the closing of the Reverse Acquisition.
Placement Agent:	Sloan Securities Corp. ("SSC" or "Agent")
Amount:	\$550,000
Investment:	Senior Convertible Promissory Notes ("Notes") and warrants (the "Warrants").
Terms of the Notes:	
Maturity Date:	The Notes shall mature upon the earlier of (i) one year after the date of issuance or (ii) consummation of any financing transaction by Drinks or the Company with a minimum gross proceeds of \$6 million. Notwithstanding the foregoing, at the holders' option, the Notes shall be satisfied, in whole or in part, from the proceeds of any debt or equity financing consummated by the Company.
Payment Terms:	Principal and accrued interest on the Notes shall become due and payable in one installment on the one year anniversary of the date of issuance.
Interest Rate:	10% per annum, calculated on actual calendar days elapsed and a 360-day year basis. Interest shall be paid in cash.
Security:	The Notes shall be unsecured obligations of Drinks, but drinks will not issue secured obligations to any third party without the Note holder's consent while the Notes are outstanding..
Conversion:	The Notes shall, at any time and at the holders of the Notes option, convert into the equity or other securities sold in the Financing that is contemplated in connection with the investment banking agreement in which this term sheet forms a part (hereinafter the "IB Financing") at the lower of \$.75 per share or the price per share of the IB Financing.
Terms of the Warrant:	The purchasers of Notes shall receive 100% Warrant coverage so that assuming all \$500,000 of principal amount of Notes are sold, such purchasers would receive five-year warrants to purchase 500,000 shares of common stock at an exercise price equal to the price per share of securities sold in the IB Financing.. Alternatively, in the event the IB Financing is not consummated on or before June 1, 2005, the exercise price and other conversion features of the Warrants from such point forward shall be \$1 per share. The Warrants shall contain customary corporate antidilution adjustments in the event of stock splits, stock dividends, and recapitalizations and "full ratchet" price protection (except for compensatory stock options). The Warrant shall contain a "cashless exercise" feature.

_____, President
December 20, 2004
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Securities Purchase Agreement:	The parties will use commercially reasonable efforts to execute a definitive securities purchase agreement (the "Securities Purchase Agreement") and other appropriate documents on or prior to December 31, 2004. The Securities Purchase Agreement will contain representations, warranties, conditions and covenants customary for transactions of this type. The Securities Purchase Agreement shall be governed by and construed in accordance with the law of the State of New York.
Conditions to Closing:	Closing subject to negotiation of definitive legal documents.
Use of Proceeds:	Proceeds from the investment shall be used for working capital purposes only.
Fees and Expenses:	Upon consummation of the Bridge Financing, the Company shall pay to SSC a cash fee equal to 10% of the principal amount of Notes issued in the Bridge Financing. Each party will bear its own expenses relating to the transactions contemplated hereby, except that the Company shall pay the reasonable fees and expenses of Littman Krooks LLP, counsel to the Agent, not to exceed \$10,000.
Other Terms:	The parties recognize that matters material to the transactions contemplated hereby that are not addressed in this Term Sheet may be raised by one another for inclusion in the Securities Purchase Agreement.
Non-Binding Term Sheet; Exceptions:	The parties acknowledge that this is a non-binding term sheet and no party shall be under any obligation to the other unless and until a Securities Purchase Agreement is executed.

EXHIBIT C

**AMENDMENT NO. 1 TO
INVESTMENT BANKING AGREEMENT**

THIS AMENDMENT, dated February 24, 2005 (this "Amendment"), between **Drinks Americas, Inc.**, a Delaware corporation (the "Company"), and **Sloan Securities Corp.**, a New Jersey corporation ("SSC").

WITNESSETH

WHEREAS, the parties hereto have heretofore entered into an Investment Banking Agreement, dated December 27, 2004 (the "Agreement"); and

WHEREAS, the Company and SSC wish to amend the Agreement to, among other things, increase the amount to be raised under the Bridge Financing,

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree to amend the Agreement as follows:

1. Definitions; References; Continuation of Agreement. Unless otherwise specified herein, each term used herein that is defined in the Agreement shall have the meaning assigned to such term in the Agreement. Each reference to "hereof," "hereto," "hereunder," "herein" and "hereby" and each other similar reference, and each reference to "this Agreement" and each other similar reference, contained in the Agreement shall from and after the date hereof refer to the Agreement as amended hereby. Except as amended hereby, all terms and provisions of the Agreement shall continue unmodified and remain in full force and effect.

2. Amendments to the Agreement. The following changes shall be made to the Agreement:

(a) The last sentence of Section 1.2 shall be amended in its entirety to read as follows:

"Prior to the consummation of the Financing, it is also contemplated that SSC shall use reasonable efforts to introduce the Company to Entities for the purposes of providing bridge financing (the "Bridge Financing") to the Company of up to \$1,000,000 on terms substantially set forth in the Bridge Term Sheet, attached hereto as Schedule B."

(b) The first sentence of Section 2 shall be amended in its entirety to read as follows:

"This Agreement shall take effect on February 24, 2005 and shall continue for an initial term of one hundred eighty (180) days thereafter (the "Term")."

(c) The Term Sheet shall be amended, to the extent necessary, to reflect the amendments referred to above. In addition, the Conversion Price described therein shall be amended to mean the lower of (i) \$0.45 per share or (ii) the price per share in the IB Financing.

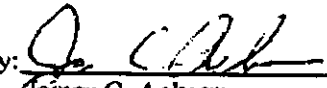
3. Counterparts. This Amendment may be executed in counterparts, all of which shall be one, and the same, agreement.

4. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the date first above written.

SLOAN SECURITIES CORP.

DRINKS AMERICAS, INC.

By: 
James C. Ackerman
President and Chief Executive Officer

By: 
Bruce Klein
Chairman of the Board

EXHIBIT D

1

1 UNITED STATES SUPERIOR COURT
 2 DISTRICT OF NEW JERSEY
 3 CIVIL ACTION NO. 07 Civ. 5590

3 PHILLIP KASSAI, :

4 Plaintiffs, :

5 -vs- : DEPOSITION OF:
 6 DRINKS AMERICA HOLDINGS, : JAMES L. ACKERMAN
 7 LTD., :
 8 Defendants. :
 9 -----

10 TRANSCRIPT of testimony as taken
 11 by and before HELEN DOHOGNE, a Certified Shorthand
 12 Reporter and Notary Public of the State of New
 13 Jersey, at the law offices of SLOAN SECURITIES,
 14 Two Executive Drive, Fort Lee, New Jersey, on
 15 December 17, 2007, commencing at 11:50 a.m.

□

2

1 A P P E A R A N C E S:

2 MOSKOWITZ & BOOK
3 1372 Broadway
4 New York, New York 10018
5 (212) 221-7999
6 BY: SUSAN J. WALSH, ESQ.
7 Attorneys for the Plaintiffs

8
9 SHELDON H. GOPSTEIN, ESQ.
10 130 West 42nd Street
11 New York, New York 10030
12 (212) 363-2400
13 Attorneys for the Defendants

14
15 THE HAMBURGER LAW FIRM
16 West Palisade Avenue & James Street
17 Englewood, New Jersey 07631
18 BY: ROBERT ROSS, ESQ.
19 (201) 705-1200
20 For the Witness

21

22

23

24

25

□

3

1

I N D E X

2 WITNESS DIRECT CROSS RE-DIRECT RE-CROSS

3 JAMES L. ACKERMAN

4 Mr. Gopstein 4

5

6

7 E X H I B I T S

8 Number Description I.D.

9 D-E Deposition Subpoena 4

10 D-F Deposition Subpoena 4

11 D-G Securities Purchase Agreement 82
12 By and Between Drinks Americas
13 Holdings, Ltd., and the
Investors Named Herein

14 D-H Letter dated September 29, 2005 82

15 D-I Promissory note 85

16 D-J Drinks Americas Holdings, Ltd., 86
Registration Rights Agreement

17 D-K Escrow deposit agreement 88

18 D-L Escrow deposit agreement 88

19 EXHIBITS RETAINED BY COUNSEL

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22

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1 (Deposition subpoena is marked as

2 D-E for identification.)

3 (Deposition subpoena is marked as

4 D-F for identification.)

5 J A M E S L. A C K E R M A N,

6 Two Executive Drive

7 Fort Lee, New Jersey, sworn:

8 DIRECT EXAMINATION BY MR. GOPSTEIN:

9 Q. Good morning, Mr. Ackerman. My

10 name is Sheldon Gopstein. I represent Drinks

11 Americas Holdings, Ltd., the defendant in an

12 action brought by Phillip Kassai now pending in

13 the United States District Court for the Southern

14 District of New York.

15 I'm going to ask you some questions

16 here today. You're under oath. Do you understand

17 the meaning of your oath?

18 A. Yes.

19 Q. And I want to first show you what

20 has been marked previously as Defendant's Exhibits

21 E and F. They are the deposition subpoenas.

22 Did you receive those subpoenas and

23 are you testifying in connection with those

24 subpoenas here today?

25 A. Yes, but I'm not appearing at the law

□

5

1 office of Sheldon H. Gopstein. We're doing the

2 deposition here at my office at Two Executive

3 Drive.

4 Q. Other than the location, are you

5 testifying here today pursuant to those subpoenas?

6 A. Yes.

7 Q. And what is your capacity with
8 respect to Sloan Securities Corp.? What is your
9 title?

10 A. I am the CEO and president.

11 Q. And with respect to Sloan Equity
12 Partners, are you -- what is your affiliation?

13 A. I am a minority partner.

14 Q. Did you get a chance to -- when you
15 received the subpoenas did you get a chance to
16 look at the request for documents?

17 A. Yes.

18 Q. Did you make a diligent search for
19 documents that are called for in the subpoenas?

20 A. We have not had sufficient time to do a
21 full search.

22 Q. How much time do you think you
23 would need to do a full search for the subpoena --
24 I'm sorry, for the documents that are called for
25 in the respective subpoenas?

□

6

1 A. Through counsel I had indicated that I
2 thought we'd be okay by the first week in January.

3 Q. Okay. And so with that
4 understanding and having spoken with your counsel
5 before, we're going to proceed with the deposition
6 here today and I'm going to ask you as many

7 questions as I can relevant to the case and about
8 the documents that you have produced.

9 We're obviously going to need to
10 keep the deposition record open pending the
11 production of additional documents.

12 Q. Mr. Ackerman, have you ever been
13 deposed before?

14 A. Yes.

15 Q. In a litigation or by the NESD?

16 A. By FINRA.

17 Q. Have you ever been deposed in any
18 court case of any kind other than a regulatory
19 proceeding?

20 A. Good question.

21 Q. Every once in a while I ask a good
22 question.

23 A. I don't believe so.

24 Q. Have you ever been a party to a
25 lawsuit, a plaintiff or a defendant to any

□

7

1 lawsuit?

2 A. Yes.

3 Q. Could you just briefly tell me
4 about that?

5 A. Sure. I owned a car that my wife was
6 driving while she was four or five months pregnant
7 and a cab driver who was not paying attention

8 plowed into her in New York City.

9 Q. We don't need to go any further.

10 A. Oh, I'm sorry.

11 Q. You were involved in an auto
12 dispute that turned into some kind of a
13 litigation?

14 A. Correct.

15 Q. Right?

16 Have you been involved as a
17 plaintiff or a defendant in a lawsuit other than
18 the car accident?

19 A. Is an arbitration through FINRA considered
20 litigation?

21 Q. Okay. Let's clarify that. Yes.

22 Let me --

23 A. Sure.

24 Q. Let's include litigation or
25 arbitration.

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8

1 A. The answer is yes.

2 Q. What arbitrations have you been
3 involved in?

4 A. I have brought an arbitration against a
5 former registered rep of Sloan Securities.

6 Q. What is the name of that registered
7 rep?

8 A. Harry Friedman.

9 Q. Does that have anything whatsoever

10 to do with Drinks Americas or Phil Kassai?

11 A. No.

12 MR. ROSS: I can represent to you
13 that none of the current litigations which are the
14 only ones that Mr. Ackerman will testify to have
15 anything to do with Drinks Americas.

16 Q. All right. Let's go then to
17 regulatory proceedings. Have you or your firm
18 been the subject of any regulatory proceedings by
19 NESD now FINRA, New York Stock Exchange or any
20 others?

21 A. Yes.

22 Q. Please describe those.

23 MR. ROSS: Do the best you can.
24 You're the witness.

25 A. Do you want me going back? Do you want me

□

9

1 answering questions about irrelevant things? I
2 need a little guidance here.

3 Q. All right. It's difficult to know
4 before you answer the question whether the subject
5 matter is relevant or not.

6 A. As a broker dealer regulated by FINRA we
7 are subject to examinations roughly every two
8 years. We are always asked questions and we are
9 always examined by them and have been on a regular
10 basis since our founding in 1987.

11 Q. Have any investigations by FINRA,
12 and by that I'm referring to what used to be
13 called the NESD as well, let's include FINRA and *
14 NASDAQ together. Have any investigations by FINRA
15 resulted in any disciplinary action?

16 A. Yes.

17 Q. Let's just focus on the ones that
18 resulted in some disciplinary action.

19 A. Sure. Many years ago I was fined for
20 acting as a FINOP. I don't remember whether it
21 was \$2,000 or \$3,000. Seven years ago, something
22 like that. And then 2003 I believe it was we
23 entered into a settlement with what was then the
24 NESD. The firm was accused of hanging a
25 registered rep's license. We entered into a

□

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1 settlement for \$6,000.

2 Q. What else?

3 A. That's it.

4 Q. Those two?

5 A. Yes.

6 Q. Are there any currently pending
7 FINRA investigations or investigations by any
8 other regulatory authorities concerning you or
9 Sloan Securities Corp.?

10 A. Yes.

11 Q. Can you tell me the nature of those
12 investigations?

13 A. They are dealing with the operations of the
14 firm. Again, we get reviewed every two years and
15 all sorts of parts of the firm get reviewed.

16 Q. Okay. In answering one of the
17 questions by plaintiff's counsel I thought you
18 indicated that there was some sort of an ongoing
19 investigation regarding actions taken by Dan Myers
20 or the firm in connection with Drinks Americas.
21 Is that true?

22 A. I'm not sure how to answer that question.
23 That's --

24 Q. All right. Then --

25 A. -- it's a very open ended question. I'm

□

11

1 not sure how to answer that.

2 Q. Let me try to rephrase it then. Is
3 there anything ongoing at FINRA regarding
4 activities by Dan Myers while he was employed at
5 Sloan Securities?

6 A. Yes.

7 Q. What is the nature of that
8 investigation?

9 A. A lack of supervision of -- a lack of
10 proper supervision of Dan Myers.

11 Q. So you are personally being charged
12 with a failure to supervise --

13 A. Yes.

14 Q. -- with respect -- specifically

15 with respect to Dan Myers?

16 A. Yes.

17 Q. Have you been charged with any --

18 with a failure to supervise any other employees?

19 A. Yes.

20 Q. Who was that?

21 A. Harry Friedman.

22 Q. All right.

23 MR. ROSS: I'm not sure that's

24 accurate.

25 THE WITNESS: You've got to help me

□

12

1 with this.

2 MR. ROSS: At the risk of

3 testifying here, I'll just -- let me try to

4 clarify what's going on.

5 To the extent that the FINRA

6 investigation has anything at all to do with

7 anything remotely connected to Drinks Americas, it

8 is, as Jim stated accurately, a lack of

9 supervision over Dan Myers in particular.

10 There is no mention whatsoever

11 about Drinks Americas, any of the transactions

12 that relate to Drinks Americas in particular.

13 Mr. * Myers --

14 THE WITNESS: Right --

15 MR. ROSS: -- had his own counsel

16 and had his own disciplinary action that, you
17 know, had nothing to do with Sloan Securities, was
18 not represented by our firm or anyone paid for by
19 Sloan Securities. He had his own defense counsel,
20 so whatever outcome occurred, occurred there.

21 As far as what's existing for this
22 firm, meaning Sloan Securities Corp. currently,
23 the only thing relating to Mr. Myers, Kassai or
24 Drinks -- I shouldn't say Mr. Kassai -- nothing
25 relates to Mr. Kassai. To the extent that Drinks

□

13

1 Americas has any relation whatsoever is with
2 respect to whatever Mr. Myers' activities were and
3 to the extent that that relates to Sloan
4 Securities it's an alleged failure to supervise
5 Mr. Myers, and any substantive allegations against
6 Mr. Myers have been handled by the NESD/FINRA
7 separately with Mr. Myers himself.

8 BY MR. GOPSTEIN:

9 Q. What is the status of the
10 proceeding against Sloan Securities today?

11 A. Pending.

12 Q. Pending. Have you given an
13 on-the-record interview at the NESD?

14 A. Yes.

15 Q. Have you since -- have you received
16 a Wells notice?

17 A. Yes.

18 Q. Have you entered into an AWC?

19 A. No.

20 Q. So the action -- the procedure is

21 just pending?

22 A. Correct.

23 Q. Are you negotiating a settlement at

24 this point?

25 A. The matter is pending at this point.

□

14

1 Q. Does the failure to supervise have

2 anything to do with anything that Dan Myers did at

3 Signature Bank to your knowledge?

4 A. I don't know how to respond to that.

5 It's -- there's nothing dealing with Signature

6 Bank in the Wells notice. I guess that's the best

7 way to put it.

8 Q. All right. What activities are you

9 alleged to have failed to supervise properly

10 according to FINRA?

11 A. Just overall acting as a * proper 24.

12 Q. What is it that Mr. Kassai has

13 allegedly done wrong that you failed to supervise

14 according to FINRA?

15 A. Mr. Kassai has not been alleged to have

16 done anything wrong.

17 Q. What is the nature of your failure

18 to supervise as you understand it according to the

19 FINRA proceeding?

20 A. Right now I'm disputing what -- what it is,
21 so I'm not sure how to answer your question.

22 MR. GOPSTEIN: All right. Let
23 me -- to the extent the documents are not
24 confidential, I don't believe that they are, I
25 would call for the production of the Wells notice

□

15

1 and any other documents relating to the ongoing
2 investigation at FINRA. Mr. --

3 MR. ROSS: I'm not sure exactly
4 what that request means. I need to see it in
5 writing because you're talking about thousands and
6 thousands of pages having been produced to FINRA
7 most of which I believe was sent electronically,
8 so I'm not even sure that I have -- I know I don't
9 have copies of the vast majority of it.

10 MR. GOPSTEIN: I certainly -- let
11 me just be clear. I certainly don't want you to
12 produce all the documents to me that you produced
13 to FINRA.

14 I started off by saying the Wells
15 notice. The Wells notice would clearly tell me
16 the scope of what they're looking at and what
17 they're investigating, so what I'd like to see --

18 THE WITNESS: With all due respect,
19 why is that any of your business?

20 MR. GOPSTEIN: Because it is.
21 With all due respect, I'm calling
22 for the production of the Wells notice and the
23 response to the Wells notice, and if I need to go
24 further I will.
25 MR. ROSS: There's been no written

□

16

1 response to the Wells notice, and I'd ask you
2 for -- for either attorney because I --
3 unfortunately I wasn't -- I should have been
4 expecting, but I did not expect that we would be
5 asked to produce additional documents, and I would
6 need a formal request, an amendment to what you
7 already have out there.

8 MR. GOPSTEIN: I'll be more than
9 happy to put it in writing. When you say you
10 didn't expect to be asked to produce --

11 MR. ROSS: I didn't bring a pad and
12 paper to right it down expecting you would ask for
13 a host of extra documents.

14 MR. GOPSTEIN: That's fine. I'm
15 going to send you a written request for at least
16 the Wells notice in connection with this
17 proceeding, and also obviously we're looking for
18 the full production of documents that your client
19 indicated he hasn't yet had a chance to produce,
20 and we'll talk about the timing of that.

21 MR. ROSS: I just want to clarify

22 one thing, too, because we exchanged e-mails, you
23 and I and Susan collectively on Friday.

24 On Friday I produced the documents
25 that were able to be located which are pretty

□

17

1 significant. I've got them here in a mini Redwell
2 here.

3 Mr. Gopstein indicated that they
4 were not responsive as to the dates, so I think
5 they were -- some documents maybe that preceded
6 the ones that we did produce we did have someone
7 here pretty much throughout the week trying to
8 locate documents.

9 I don't know that other documents
10 necessarily exist. In other words, what
11 Mr. Ackerman has said, it will probably take us
12 until the beginning of January to get them
13 together.

14 What I'm saying is we've had
15 someone trying to get them together for the better
16 part of a week, and I don't know that there are in
17 fact any additional outstanding documents.

18 To the extent there are, we'll get
19 them together and produce them based on your
20 e-mail saying we didn't produce I believe it was
21 the '04 documents, but we did produce the '05
22 documents.

23 MR. GOPSTEIN: Right. I don't want
24 to spend a whole lot more time on the record here,
25 but I'll certainly confirm that there was a

□

18

1 production of documents by e-mail on Friday;
2 however, it is clear to me that the documents
3 weren't complete, and that's why I sent you my
4 e-mail, and it's even clearer now that your client
5 has said he just doesn't know whether this is a
6 complete production, hasn't had a chance to
7 determine whether it is or it isn't.

8 THE WITNESS: Correct.

9 MR. GOPSTEIN: I have good reason
10 to believe it's not.

11 MR. ROSS: Okay.

12 MR. GOPSTEIN: Let's just leave it
13 at that and hopefully --

14 MR. ROSS: Okay.

15 MR. GOPSTEIN: -- we'll get --

16 MR. ROSS: To the extent you're
17 going to ask for additional documents today on the
18 record that were not part of either of the
19 subpoenas, I'm going to request those in writing.

20 MR. GOPSTEIN: You got it.

21 BY MR. GOPSTEIN:

22 Q. Mr. Ackerman, when is the last time
23 you spoke with Phillip Kassai?

24 A. A few weeks ago.

25 Q. What did you talk about?

□

19

1 A. We talked about the dealings with Sloan
2 Asset Management.

3 Q. Do you still have ongoing business
4 affairs with Mr. Kassai?

5 A. We and Phil, myself and Dan are partners in
6 a company called Sloan Assets Management.

7 Q. What is the business of Sloan Asset
8 Management?

9 A. Great question. It's -- we have other
10 partners there. Joshua Segal and Michael Appleby,
11 and Phil, Dan and I funded the startup to finance
12 insurance premiums for large insurance policies.

13 The business -- we put money in.
14 We haven't gotten any money out and we are
15 currently in a dispute with the operating partner
16 who is Josh Segal, so I talked to Phil and Dan
17 about these things.

18 Q. When was Sloan Asset Management
19 formed approximately?

20 A. '05? Early '05?

21 Q. And when is the last time you spoke
22 to Dan Myers?

23 A. Last week.

24 Q. What did you talk to him about?

25 A. Sloan Asset Management.

□

20

1 Q. Anything else?

2 A. No.

3 Q. Have you had occasion to speak to
4 Phil Kassai or Dan Myers about anything having to
5 do with this lawsuit?

6 A. At any time, yes.

7 Q. Let's take it one at a time. When
8 have you spoken with Phil Kassai about this
9 lawsuit?

10 A. I don't remember.

11 Q. Was it this year, 2007?

12 A. Yes.

13 Q. Did you also speak with him -- what
14 did you talk about in sum and substance?

15 A. The suit.

16 Q. What about the suit? What did you
17 say to him and what did he say to you?

18 A. He said to me that he was bringing a suit
19 against Drinks Americas.

20 Q. And what did you say?

21 A. I said, okay, why. He said, because I
22 think Drinks screwed us.

23 Q. What did you say?

24 A. I said, you're probably right.

25 Q. And what did he say?

□

21

1 A. He said the stock was 45 cents and it went
2 up to three fifty. They didn't respond to any of
3 our requests for warrants, and so I'm going to sue
4 them.

5 Q. And what did you say?

6 A. Good luck.

7 Q. Did he ask you why you weren't
8 suing them?

9 A. Yes.

10 Q. What did you say?

11 A. I said I had enough problems at the moment.
12 I didn't need to get involved in another lawsuit
13 and go through the expense of hiring an attorney.

14 Q. And when you said you had enough
15 problems at the moment, what problems were you
16 referring to?

17 A. The arbitrations and the FINRA examinations
18 that we're going through.

19 Q. Okay. Did that conversation that
20 you're describing happen all at once or are you
21 summarizing several conversations?

22 A. Several.

23 Q. All right. Can you break them down
24 for me? Did they differ in any way?

25 A. I don't remember.

□

22

1 Q. Did you offer him any assistance in
2 the lawsuit, tell him you would help him in any
3 way?

4 A. I said I would produce whatever documents
5 are necessary.

6 Q. When is the last time or did you
7 ever speak to Dan Myers about the lawsuit?

8 A. Yes.

9 Q. When?

10 A. On -- when we were trying to figure out how
11 many warrants we were entitled to, Danny was the
12 investment banker on the deal, and so he had close
13 hands-on knowledge on it, and we literally worked
14 together to figure out the 217,000 -- I think it's
15 500 warrants that we feel that we're entitled to
16 in addition to the 300,000 that were issued to
17 Sloan Equity Partners.

18 Q. So is it your belief that your --
19 that Sloan Securities or Sloan Equity Partners is
20 actually entitled to 517,500 warrants from Drinks
21 Americas?

22 A. I believe you have the documents that show
23 what we believe.

24 Q. I'm asking you from your
25 recollection because I don't have any such

□

23

1 document that says you're entitled to 517,500

2 warrants.

3 A. Sloan Equity Partners was erroneously
4 issued a stock warrant for 300,000 warrants. It
5 should have been to Sloan Securities Corp. We
6 sent a letter to Drinks Americas asking that that
7 warrant be executed, and then we sent a request
8 for another 217,500 warrants to be split up as the
9 letter states.

10 Q. In what way was the warrant for the
11 300,000 shares issued in error as you say?

12 A. It should have been --

13 Q. Or I think the word you used was
14 erroneous.

15 A. Sure.

16 Q. How was it erroneous?

17 A. It should have been issued to Sloan
18 Securities Corp. as opposed to Sloan Equity
19 Partners.

20 Q. Why was it issued to Sloan Equity
21 Partners?

22 A. My understanding is because that's what Dan
23 Myers requested of Mr. Bruce Klein.

24 Q. Were you involved in the
25 negotiation or execution of that warrant for

□

24

1 300,000 shares?

2 A. No.

3 Q. Just to be clear, I'm going to put

4 it in front of you so we make sure we're talking
5 about the same thing. Plaintiff's Exhibit 5 was
6 previously marked at another deposition. It is a
7 stock purchase warrant dated May 9, 2005.

8 A. That's the one.

9 Q. Is that the document that you're
10 referring to?

11 A. Yes.

12 Q. And you believe that this was
13 erroneously issued to Sloan Equity Partners when
14 it should have been issued to Sloan Securities
15 Corp., correct?

16 A. Correct.

17 Q. All right. Did Sloan Equity
18 Partners have any right or entitlement to any
19 warrants whatsoever when this was executed?

20 A. Yes and no.

21 Q. Please explain.

22 A. Sloan Securities Corp. is the party to the
23 investment banking agreement. Remuneration under
24 the investment banking agreement can only be paid
25 to a broker dealer; however, the broker dealer has

□

25

1 the right to give compensation to whichever
2 registered reps it wants.

3 My agreement with Phil Kassai and
4 Dan Myers was to split up any warrants that we got

5 as follows: 40 percent for Mr. Kassai, 40 percent
6 for Mr. Myers and 20 percent for myself.

7 Sloan Equity Partners was a
8 partnership between the three of us that we had
9 formed to invest in certain companies that we were
10 raising money for and put warrants into those --
11 into that partnership name at some point.

12 Q. So the intent was to receive
13 warrants or compensation for various companies and
14 then to use Sloan Equity Partners as a vehicle for
15 holding --

16 A. Sometimes. If you take a look at the
17 letters that we sent to Drinks you'll see we
18 parceled it up among the reps that we felt were
19 entitled to the warrants there and asked that they
20 be assigned as such.

21 Q. Okay. I'll show you what has been
22 marked as Defendant's Exhibit B. It is a letter
23 dated April 2, 2007 from Sloan Securities to Bruce
24 Klein, Chairman.

25 Is this the type of letter that

□

26

1 you're referring to?

2 A. Yes.

3 MS. WALSH: Off the record for a
4 second.

5 (Discussion off the record.)

6 BY MR. GOPSTEIN:

7 Q. Does the April 2, 2007 letter from
8 Sloan to Drinks ask for any warrants to be issued
9 to Sloan Equity Partners?

10 A. No.

11 Q. Why not?

12 A. Because we're assigning them directly to
13 the registered reps that would be entitled to
14 them.

15 Q. So then, again, on May 9, 2005 why
16 did the warrant get issued to Sloan Equity
17 Partners?

18 A. As I stated previously, it was an error.

19 Q. An error by Dan Myers?

20 A. I was told that Dan Myers had asked -- by
21 Dan Myers that he had asked that it be put into
22 this name.

23 Q. Did you ever ask him why he did
24 that?

25 A. I did.

□

27

1 Q. What did he say?

2 A. He claims I told him to.

3 Q. That is not true, is it?

4 A. No, that is absolutely not.

5 Q. Is it your understanding that a
6 broker dealer can only receive compensation in its
7 own name and cannot assign the compensation prior

8 to receiving it?

9 A. I think I stated that in the answer to my
10 earlier question.

11 Q. I wanted to follow up on that. You
12 actually did.

13 A. Right.

14 Q. What is your understanding of the
15 rules at FINRA regarding the receipt of
16 compensation?

17 A. Compensation has to come to a broker
18 dealer. Then a broker dealer can pay registered
19 reps as it sees fit, but only registered people.

20 Q. But the compensation must be
21 initially paid to the broker dealer?

22 A. Right.

23 Q. So it would have been improper for
24 the compensation, in this case, the stock purchase
25 warrant, to go directly to Sloan Equity Partners?

□

28

1 A. Which is why I pointed it out as an error
2 in correspondence to Drinks.

3 Q. And is it your understanding that
4 it would be a violation of FINRA rules for the
5 warrant to be paid directly to Sloan Equity
6 Partners?

7 A. Yes. Because Sloan Equity Partners is not
8 a registered entity.

9 Q. Other than being owned by the

10 principals or former principals of Sloan
11 Securities Corp., what relationship does Sloan
12 Equity Partners have to Sloan Securities Corp.?
13 A. I have to correct what you just said. The
14 only principal of Sloan Securities that was a
15 partner of Sloan Equity Partners is me.

16 Q. At no time was Phillip Kassai an
17 officer or director of Sloan Securities Corp.?

18 A. No.

19 Q. And was Dan Myers ever an officer
20 or executive director of Sloan Securities?

21 A. No.

22 Q. What was Dan Myers' title or
23 position at Sloan Securities Corp. while he was
24 employed there?

25 A. Managing director of investment banking.

□

29

1 Q. What was Phillip Kassai's position?

2 A. Managing director of investment banking.

3 Q. Did you indicate that Phillip
4 Kassai resigned voluntarily?

5 A. Yes.

6 Q. And -- but you terminated Dan
7 Myers, correct?

8 A. Correct.

9 Q. And if you could I don't want to
10 repeat what was testified to earlier this morning,

11 but could you just summarize the reasons why you
12 terminated Dan Myers?

13 A. He was found to have violated a number of
14 our WSP's written supervisory procedures of the
15 firm, and he was found to have violated a number
16 of FINRA rules.

17 Q. And did any of those violations
18 have anything to do with Drinks Americas?

19 A. I don't know.

20 Q. Well --

21 A. The ones that we found, no.

22 Q. Not the ones that you found?

23 A. Correct.

24 MS. WALSH: Whenever it's time for
25 a break, there's something I need to tell you,

□

30

1 Sheldon. It's probably that buzzing on the phone.

2 (Discussion off the record.)

3 MR. GOPSTEIN: That was Mr. Ross'
4 office calling in error by the way, but we
5 appreciate their diligence in following up.

6 So we're back here, and what was
7 the last question.

8 (The follow was read back:

9 "QUESTION: And did any of those
10 violations have anything to do with Drinks
11 Americas?

12 "ANSWER: I don't know.

13 "QUESTION: Well --
14 "ANSWER: The ones that we found,
15 no.
16 "QUESTION: Not the ones that you
17 found?
18 "ANSWER: Correct.")
19 THE WITNESS: Can I take a minute
20 break here?
21 MR. GOPSTEIN: Sure.
22 (A short recess is taken.)
23 BY MR. GOPSTEIN:
24 Q. Mr. Ackerman, is there something
25 that you needed to clarify because I saw you kind

□

31

1 of shaking your head a minute ago. Feel free to
2 clarify something if you need to.
3 A. Very good.
4 Q. Is there anything?
5 A. I'm sure we'll get to it.
6 Q. Okay. We were on the subject of
7 the reasons you terminated Dan Myers.
8 A. Right.
9 Q. And I had asked you whether any of
10 those reasons had anything to do with --
11 A. Drinks Americas.
12 Q. -- Drinks Americas.
13 A. And the answer was no.

14 Q. Okay. Did you subsequently
15 determine that Dan Myers did anything improper in
16 relation to your client, Drinks Americas?

17 A. Yes.

18 Q. Was that --

19 A. I was hoping you'd get to the question.

20 Q. Was that after you fired him?

21 A. Yes.

22 Q. Okay. What did you put on his U-5
23 at the time that you terminated him in general --
24 in sum or substance?

25 A. I don't remember. My chief compliance

□

32

1 officer would have done it. I don't remember. We
2 can certainly produce it, but I don't remember.

3 MS. WALSH: Sorry. Are we just
4 going to reserve all objections on both mine and
5 your --

6 MR. GOPSTEIN: I think that's what
7 we're doing on both sides.

8 MS. WALSH: Sorry to interrupt.

9 THE WITNESS: That's okay.

10 Q. If you don't mind I would also call
11 for the production of Dan Myers' U-5.

12 A. Sure.

13 Q. And any amendments to the U-5.

14 A. Sure.

15 MS. WALSH: It's publicly filed.

16 THE WITNESS: Right.

17 Q. Although you say that your

18 compliance officer handled this -- by the way, who

19 was your compliance officer at the time?

20 A. Ford Prigot, P-R-I-G-O-T.

21 Q. Did you have conversations with

22 your compliance officer prior to filing Dan Myers'

23 U-5?

24 A. Yes.

25 Q. And did you talk about the reasons

□

33

1 he was being fired?

2 A. Yes.

3 Q. Did you talk about what you were

4 going to put on his U-5?

5 A. Yes.

6 Q. What --

7 A. I don't remember exactly what we ended up

8 putting on the U-5. As I stated previously, we'll

9 be happy to give you a copy.

10 Q. Did you ever or did the firm amend

11 Dan Myers' U-5 at any time?

12 A. His U-5?

13 Q. His U-5.

14 A. Not that I remember.

15 Q. Because according to, and correct

16 me if I'm wrong, but you indicated that you found

17 subsequent wrongdoing after he had already been
18 terminated.

19 A. No, that's incorrect. Now let me tell
20 you --

21 Q. Go ahead.

22 A. Okay. When Phil Kassai told me he was
23 going to sue Drinks Americas --

24 Q. Give me an approximate time frame.

25 A. I don't remember. I told him exactly what

□

34

1 I said to you earlier in my statement.

2 I then received a phone call from
3 an attorney who said they were representing Drinks
4 Americas.

5 Q. Was it Joe Kannella?

6 A. Yes.

7 Q. When was this?

8 A. I don't remember.

9 Q. 2006? 2007?

10 A. I don't remember if it was late '06 or '07.

11 I can check and see when the date was. I really
12 just don't remember but he insinuated to me that
13 Dan Myers had done something wrong, and that was
14 the first that I knew about anything possibly
15 happening, so I did not have any proof of
16 anything. I had no firsthand knowledge of
17 anything.

18 An insinuation from a lawyer for

19 Drinks Americas that Dan Myers had raised money
20 for Drinks and not given it to Drinks but taken it
21 himself and then subsequently given it back to
22 investors who had put that money up is what was
23 insinuated to me. I had no proof of anything. I
24 had no knowledge of anything. That was the first
25 that I had heard of it.

□

35

1 Q. Did you investigate that
2 allegation?

3 A. Well, he was no longer an employee of Sloan
4 Securities at that point.

5 Q. But the allegation was that he had
6 done this while he was employed at Sloan
7 Securities?

8 A. Yes, yes, that is correct.

9 Q. Did you determine whether it was
10 true or not?

11 A. I called Danny and I asked him pointblank,
12 and he said under advice of counsel he really
13 can't get into anything, but that he had made
14 right whatever he had done as he was doing and all
15 of the things that he was doing.

16 Q. Did Joe Kannella tell you that an
17 investor had actually called Drinks Americas and
18 asked where his stock was and that's how they knew
19 that Sloan had raised money?

20 A. Honestly I don't remember that.

21 Q. Do you remember anything else that

22 Joe Kannella told you during that conversation?

23 A. He insinuated that it wouldn't be in Sloan

24 security's interests to pursue the warrants that

25 we were entitled to. He insinuated that Mr. Klein

□

36

1 had signed the \$300,000 warranty and wasn't paying

2 attention at the time and didn't really mean to do

3 it, and I questioned him about that because I

4 didn't understand that comment.

5 Q. So did he tell you that Bruce Klein

6 had signed the May 9, 2005 warrant without

7 authority?

8 A. Yes. That is what he claimed.

9 Q. Did you --

10 A. I asked him how does a CEO -- excuse me,

11 how does a chairman of a company sign a warrant

12 without authority.

13 Q. Did he explain to you that Bruce

14 Klein is a non-executive member of the board?

15 A. No, he did not.

16 Q. Did he explain to you that there

17 was never any corporate resolution whatsoever

18 authorizing Bruce Klein to sign that warrant?

19 MS. WALSH: Objection.

20 A. No, he did not is the answer to the

21 question.

22 Q. But he simply told you that Bruce
23 Klein didn't have authority to sign it?

24 A. Correct.

25 Q. And so Joe Kannella was disputing

□

37

1 the validity of the stock warrant, correct?

2 A. Correct.

3 Q. And he also told you that Dan Myers
4 or that he thought Dan Myers had done something
5 improper with respect to money raised for Drinks
6 Americas?

7 A. He insinuated that. He didn't out and out
8 say anything.

9 Q. Okay. Have you subsequently found
10 out whether or not what Joe Kannella insinuated is
11 true?

12 A. No.

13 Q. Have you inquired or made any
14 investigation whatsoever?

15 A. I spoke to Dan, as I said.

16 Q. But Dan refused to answer your
17 question?

18 A. Pretty much, yes.

19 Q. Did you find anything else out from
20 Phillip Kassai or anyone else?

21 A. I spoke to Phil about it. He had no
22 knowledge of it.

23 Q. All right. Is it your testimony
24 that while Dan Myers was allegedly doing this you
25 had no knowledge of it whatsoever?

□

38

1 A. What are we talking about?

2 Q. Well, would you describe in your
3 own words what you believe Dan Myers was accused
4 of doing?

5 A. I believe I did that earlier, that he was
6 accused of raising money and then not giving it to
7 Drinks Americas.

8 Q. So let's call it, for lack of a
9 better term, diverting money that was supposed to
10 go to Drinks Americas elsewhere. Is that --

11 A. I have -- I don't know.

12 Q. Okay. I'm just -- I want to just
13 call it something. The event. You want to call
14 it the event of diverting money? Okay.

15 Did you do anything to investigate
16 or inquire whether Dan Myers had in fact diverted
17 money from Drinks Americas for his own use?

18 A. As I stated before, I called Dan and I
19 called Phil.

20 Q. And that's it?

21 A. Checked -- took a look at e-mails. Didn't
22 see anything there.

23 Q. When money is raised by Sloan
24 Securities Corp. for a client like Drinks

25 Americas, for instance, where does that money go?

□

39

1 A. It goes into an escrow account.

2 Q. And what bank were you using at the
3 time that -- at the time that you were dealing
4 with Drinks Americas?

5 A. Signature Bank.

6 Q. Did you have any other banks?

7 A. No.

8 Q. So all of Sloan Security's business
9 accounts were at Signature Bank?

10 A. No. All of Sloan Securities' escrow
11 account for escrow banking is at Signature Bank.

12 Q. Did you have business accounts
13 outside of Signature Bank?

14 A. Oh, yes.

15 Q. Where?

16 A. Bank of America.

17 Q. But no investor monies --

18 A. Correct.

19 Q. -- or escrow funds were at Bank of
20 America?

21 A. Correct.

22 Q. Did you have separate escrow
23 accounts at Signature Bank for each particular
24 deal, for each particular client, for each
25 particular investor, how did that work?

□

40

1 A. For each particular deal we entered into an
2 escrow agreement with the bank and with the
3 client.

4 Q. Who would be the signatories on the
5 account on these escrow accounts?

6 A. Me.

7 Q. Just you?

8 A. Yes.

9 Q. And what would the title of the
10 escrow account be? For instance, for Drinks
11 Americas what would the title be?

12 A. Escrow account for Drinks Americas. I mean
13 it would be a general name of the client.

14 Q. It would be under the name Drinks
15 Americas or would it be Sloan Securities Corp. for
16 the benefit of Drinks Americas, or how --

17 A. I guess it would be Sloan Securities for
18 the benefit -- I don't remember, but, yes, it
19 would be something along those lines.

20 Q. Okay. The reason I ask is that I
21 have been in touch with Sloan -- I'm sorry, I've
22 been in touch with Signature Bank and they can't
23 find a single account, so what they've told me is
24 I'm probably not giving them the proper name or
25 proper title.

□

41

1 I certainly don't have the account
2 numbers. What I'm going to do now and pursuant to
3 your counsel's request, I'm going to be more than
4 happy to put this in writing as well, I'm going to
5 call for the production of the account numbers and
6 titles of each and every escrow account that Sloan
7 Securities had at Signature Bank that had anything
8 to do with Drinks Americas or their investors,
9 okay?

10 A. Ah-hum.

11 Q. Are we talking about one account,
12 two accounts, ten accounts? Do you have any idea
13 how many that would be?

14 A. Probably just one or two.

15 Q. Just one or two.

16 A. Yes.

17 Q. Okay. If possible I would
18 appreciate the account numbers also. That would
19 help us trace them more quickly.

20 A. Okay.

21 Q. If you were the sole signatory on
22 the escrow accounts set up by Sloan Securities
23 Corp. for Drinks Americas, how could it be that
24 Dan Myers would be able to divert money out of
25 that account for his own purpose?

□

42

1 A. First of all, let me correct one thing.
2 When an escrow account is set up between Sloan
3 Securities and a client, there are actually two
4 signatures required. There's a signature of mine
5 and a signature of a representative of the client.
6 Most often it's usually the CEO or the chairman of
7 the client.

8 Q. Do you know who --

9 A. Now --

10 Q. -- on behalf of Drinks was the
11 co-signer on the escrow --

12 A. I don't remember. We have to look at the
13 documents.

14 Q. To the best of your recollection --

15 A. To the best of my recollection it would
16 have been Bruce Klein because he signed all of the
17 documents with us including the investment banking
18 agreements.

19 Q. But it would have definitely been
20 you and someone else from Drinks?

21 A. That is correct.

22 Q. So go ahead.

23 A. To answer your question about Dan Myers, it
24 would have to be something illegally done without
25 my knowledge.

□

43

1 Q. Are you aware whether Dan Myers has

2 forged your signature or any Drinks Americas'

3 signature?

4 A. That I don't know.

5 Q. Was Dan Myers ever an authorized

6 signatory on any escrow accounts?

7 A. No.

8 Q. At Signature Bank?

9 A. No.

10 Q. Who was the account manager or

11 officer at Signature Bank with whom you dealt?

12 A. It was the manager. I don't remember his

13 name. I don't remember his name. I'd have to

14 look it up for you.

15 Q. Could we leave a blank in the

16 transcript and if possible get me that information

17 even before the transcript comes back?

18 A. Sure.

19 Q. Again, the name of the person at

20 Signature Bank that you primarily dealt with --

21 A. Sure.

22 Q. -- in connection with your escrow

23 accounts?

24 A. Ah-hum.

25 Q. Do you have any information as to

□

44

1 what funds or how many -- or how much money was

2 allegedly diverted from Signature Bank by Dan

3 Myers?

4 A. No.

5 Q. Do you know whether it was in
6 connection with the December '04 investment
7 banking agreement or the September '05 investment
8 banking agreement?

9 A. As I previously stated, I didn't even know
10 it happened, so the answer is no.

11 Q. When is the very first time that
12 you learned that it did happen or that it may have
13 happened?

14 A. The phone call from Drinks Americas'
15 attorney, Joe.

16 Q. Joe Kannella?

17 A. Kannella, yes.

18 Q. And you don't remember when that
19 was?

20 A. No.

21 Q. Do you have any record, diary,
22 calendar, anything that would indicate
23 approximately when that phone call -- phone
24 conversation took place?

25 A. I don't think so.

□

45

1 Q. Is there any document that would
2 help refresh your recollection as to when that
3 call took place?

4 A. That I don't know.

5 Q. If you were to try to investigate
6 and go back and recreate what date that was, how
7 would you do that?

8 A. I'm not sure.

9 Q. Mr. Ackerman, I'm going to show you
10 what has been previously marked as -- actually,
11 let's work off of the one that you already have in
12 front of you which is Defendant's Exhibit B.
13 Could you take a look at Defendant's Exhibit B.

14 We've already talked about the
15 cover page but attached to Exhibit B is the
16 December 27, 2004 investment banking agreement,
17 correct?

18 A. Yes.

19 Q. Are you familiar with that
20 agreement?

21 A. Yes.

22 Q. What was your role in the drafting
23 or negotiation of that agreement?

24 A. Dan Myers negotiated most of it, of the
25 business points with Mr. Klein.

□

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1 My attorneys actually drafted the
2 document, and then I reviewed it before executing
3 it.

4 Q. And that is your signature on the
5 agreement at the end, on page 11?

6 A. Yes.

7 Q. Is it accurate to say that in
8 essence this December 27, 2004 investment banking
9 agreement calls for Sloan Securities to do an
10 initial bridge financing and then a six to ten
11 million dollar additional financing?

12 A. Yes.

13 Q. Okay.

14 A. Bridge financing is supposed to be up to
15 \$550,000 on terms essentially set forth in bridge
16 terms sheet. It's on page three, paragraph 1.2.

17 Q. Okay. Try to slow down if you
18 could when you're reading so that the court
19 reporter gets that.

20 Where were you just reading from?

21 A. Page three of the document you handed me,
22 section 1.2 under financing, the last sentence of
23 that paragraph right before section 1.3.

24 Q. Are we looking at the same page?

25 MR. ROSS: Starting with "prior."

□

47

1 Q. I see. So you're referring to the
2 term "bridge financing" at the end of paragraph
3 1.2?

4 A. That whole sentence, yes.

5 Q. Okay. And isn't it accurate that
6 the amount of the bridge financing was actually
7 raised to 1,350,000?

8 A. No. The actual financing was raised to
9 1.350.

10 Q. Well, how much of --

11 A. But I don't --

12 Q. How much of a bridge financing did
13 you complete?

14 A. I don't know that it was a bridge
15 financing. I think it was a regular old financing
16 for 1,350,000. We completed 1,350,000 of
17 financing.

18 Q. You did?

19 A. Ah-hum.

20 Q. But you were supposed to do a
21 bridge financing followed by a subsequent equity
22 raise, right?

23 A. Right. And we did a 1.350 equity raise.

24 Q. You did?

25 A. I believe so.

□

48

1 Q. And what is the basis for your
2 statement that you did no bridge financing at all
3 and just an equity raise, is that your testimony?

4 A. I think that's the way it worked out.

5 Q. Let's take a look at Schedule B.
6 It says "Bridge financing term sheet." The amount
7 is \$550,000, correct?

8 A. That's what it says on Schedule B, yes.

9 Q. And the investment is a senior

10 convertible promissory note and warrant, correct?

11 A. Yes.

12 Q. And in fact that's what was issued,
13 was it not, was senior convertible promissory
14 notes convertible to stock, correct?

15 A. Yes, that's correct.

16 Q. And so you raised a bridge
17 financing or you did a bridge financing initially,
18 did you not, for Drinks Americas?

19 A. Again, we raised 1.35 million dollars for
20 them, and we did it, as you stated, with the
21 senior convertible promissory note and warrants.

22 Q. Okay. And you raised the
23 \$1,350,000 pursuant to the terms on this Schedule
24 B, correct?

25 A. Correct. Except the amount is different.

□

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1 It was almost three times.

2 Q. Okay. And in fact the investment
3 banking agreement was amended, was it not?

4 A. I believe so.

5 Q. So let me show you what has been
6 previously marked as Defendant's Exhibit C,
7 amendment number one to the investment banking
8 agreement dated February 24, 2005.

9 Are you familiar with that
10 document?

11 MS. WALSH: I'm just going to ask
12 you that provide us with copies of all defendant
13 exhibits like I did with the plaintiff's one.

14 MR. GOPSTEIN: Sure.

15 MS. WALSH: Thanks.

16 A. Yes.

17 Q. I want you to take a look at
18 paragraph 2A. There's no dispute that the bridge
19 financing was increased to a million dollars
20 pursuant to this amendment, is there?

21 MS. WALSH: Objection.

22 A. Counsel for the other side showed me an
23 amendment moving it to 1.350 before. I don't
24 think this is the same document.

25 Q. Well, I'm asking you about this

□

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1 document, and then we'll get to that some other
2 time.

3 This is an amendment to the
4 investment banking agreement, is it not? By the
5 way, I don't think counsel showed you any
6 amendments to the investment banking agreement.
7 She showed you an amendment to a securities
8 purchase agreement.

9 A. Oh, okay.

10 Q. Two different documents, correct?

11 A. Gotcha, yes. This is the amendment to the
12 investment banking agreement, yes.

13 Q. And this amendment amends the
14 December 27, 2004 agreement, correct?
15 A. Yes.
16 Q. And pursuant to this amendment the
17 bridge financing was raised to a million dollars,
18 correct?
19 A. Yes.
20 Q. But in fact you raised -- or Sloan
21 raised a total of 1,350,000 for Drinks Americas,
22 correct?
23 A. Correct.
24 Q. Thank you.
25 Now, do you know whether there were

□

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1 any other amendments to the investment banking
2 agreement other than what has been marked as
3 Defendant's Exhibit C?
4 A. I don't remember any others.
5 Q. This is marked amendment number
6 one. Do you have any idea if there was ever an
7 amendment number two?
8 A. I don't remember any others.
9 Q. What is your understanding of what
10 was issued by Drinks Americas in connection with
11 the raise of 1,350,000 by Sloan Securities?
12 A. They issued the senior convertible
13 promissory notes to the investors and they issued

14 the warrants to the investors.

15 Q. Now, the warrants that were issued
16 to the investors were issued subsequently,
17 correct?

18 A. Yes.

19 Q. The warrants were not
20 simultaneously issued at the time the promissory
21 notes were issued, correct?

22 A. I believe that's correct.

23 Q. And the warrants might or might not
24 have been exercised according to the terms of the
25 promissory note, correct?

□

52

1 A. Yes, that's correct.

2 Q. But ultimately they were exercised?

3 A. Yes.

4 Q. Do you know whether they were all
5 exercised or some?

6 A. No, it would have been the individual
7 investors' decisions.

8 Q. Do you know whether Drinks Americas
9 had to consent to the exertion of the warrants?

10 A. I don't remember what the document said.

11 Q. Do you know whether Drinks Americas
12 had to consent in order for the notes to be
13 converted to warrants?

14 A. Again, I don't remember what the document
15 said. I remember going through the process

16 because there were a couple of investors who asked
17 me to help them convert, and we sent them to
18 Drinks and they were converted.

19 Q. Do you know whether there were any
20 amendments to the term sheet Schedule B to the
21 December 27, 2004 agreement other than the
22 amendment number one to the agreement itself?

23 A. I don't remember any others.

24 Q. Was Sloan paid its commissions for
25 raising \$1,350,000 for Drinks Americas?

□

53

1 A. We were paid the cash commissions, yes.

2 Q. How was Sloan paid its cash
3 commissions?

4 A. Do you mean was it paid by a wire or a
5 check?

6 Q. Yes. Did you --

7 A. I --

8 Q. Let me ask you. Did the money come
9 into Sloan and then you deducted it and then gave
10 the balance of the proceeds, or how did that work?

11 A. Sure. All of the money came into the
12 escrow account, and then a disbursement from the
13 escrow account is prepared and signed off on by
14 myself and an officer of Drinks, and so we would
15 have to wire the money to Drinks that they were
16 entitled to pursuant to a piece of paper, and we

17 would have gotten a wire from the bank for our
18 commission.

19 Q. Okay. So Drinks would have
20 received the net proceeds of the private
21 placement, correct?

22 A. Correct.

23 Q. All right. And your fees or
24 commissions would have been wired directly from
25 Signature Bank, but with the approval of Drinks?

□

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1 A. Yes.

2 Q. And those monies were paid in full,
3 correct?

4 A. Yes.

5 Q. Do you have any accounting or is
6 there any such accounting that would indicate the
7 exact amount of those commissions?

8 A. Yes.

9 Q. And how they were paid?

10 A. Sure.

11 Q. Would you -- would it be too
12 difficult to produce those? Would you have those
13 documents readily available?

14 A. Again, give the list.

15 Q. Right. Okay. It's one of the
16 things I believe was already included but let me
17 specifically --

18 MS. WALSH: This is the account

19 Drinks signs off of as well as Sloan, you're
20 calling for the production of it from him.

21 MR. GOPSTEIN: We're trying to get
22 an accounting of the monies paid to Sloan
23 Securities via the escrow account.

24 MS. WALSH: I just want to make
25 sure it's the same account we're referencing, it's

□

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1 the one with defendant's signature required on it
2 as well, that account?

3 MR. GOPSTEIN: I don't know how
4 many accounts there were but certainly this is --
5 these escrow accounts were set up by Sloan
6 Securities, and they should have the financial
7 records showing monies that were paid to them, and
8 I think they do have those records, and I'm
9 calling for the production of those records.

10 BY MR. GOPSTEIN:

11 Q. Were any warrants or purported
12 rights to any warrants assigned from Drinks
13 Americas to Phillip Kassai at any -- I'll withdraw
14 that. I meant to say Sloan obviously, so let me
15 rephrase it again.

16 Were any warrants or purported
17 rights to any warrants assigned by Sloan
18 Securities to Phillip Kassai at any time?

19 A. Yes.

20 Q. When and how?

21 A. You'd have to look at the document that we
22 sent to Drinks.

23 Q. Well, the documents you sent to
24 Drinks, some of them simply request the exercise
25 of warrants.

□

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1 Other than requests of that nature
2 that were sent to Drinks Americas, did Sloan
3 Securities actually assign or attempt to assign
4 any warrants to Phillip Kassai?

5 A. Yes, I believe we did.

6 Q. When?

7 A. Probably around the time that we sent those
8 letters in requesting that they be issued to the
9 people that we listed there.

10 Q. Okay. Do you know whether you've
11 produced those assignments in connection with the
12 subpoenas?

13 A. No, I don't know.

14 Q. Do you believe that those
15 assignments actually exist?

16 A. I don't know. Again, I would have to
17 check --

18 MR. ROSS: Do you want to do this
19 on or off the record?

20 MR. GOPSTEIN: I'd rather do it on
21 the record. Let me just finish a couple of

22 questions, and then you can clarify this if you'd
23 like.

24 BY MR. GOPSTEIN:

25 Q. For instance, let me put before you

□

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1 what your attorney was just looking at, it's
2 Defendant's B, the first page of Defendant's B,
3 and it's a letter from Sloan -- from yourself to
4 Bruce Sloan. Is that the assignment that you're
5 referring to?

6 A. Yes.

7 MR. ROSS: Do you understand the
8 question?

9 THE WITNESS: Yes.

10 MR. ROSS: He's asking was there a
11 separate assignment like you might make --

12 A. Right. I don't think so. On the letter,
13 April 2nd, 2007, it states "Please allow this
14 letter to serve as Sloan's desire to assign and
15 exercise the warrant as follows."

16 And then it lists four different
17 people and the number of shares to be assigned to
18 them with their respective Social Security
19 numbers.

20 Q. Pursuant to this letter dated April
21 2, 2007, you were expressing your desire to assign
22 and exercise certain warrants, correct?

23 A. Yes.

24 Q. But the warrants had not in fact

25 been assigned or exercised at any time prior to

□

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1 this letter, correct?

2 A. That is correct. The warrants hadn't been

3 produced by Drinks.

4 Q. So you were asking for these --

5 whatever warrants you thought you were entitled to

6 to be assigned to these various people?

7 A. Yes, that's accurate.

8 Q. At any time up to this moment today

9 are you aware as to whether Phillip Kassai has

10 ever actually had any warrants or rights to any

11 warrants assigned to him in connection with Drinks

12 Americas?

13 A. Well, yes. This here (indicating).

14 Q. Well, this is a letter expressing a

15 desire to assign. I'm asking you whether there's

16 actually been an assignment.

17 A. There would not -- there would not be a

18 separate piece of paper because the separate piece

19 of paper normally would be attached to the warrant

20 for the 217,500 shares that we believed we were

21 entitled to, but that warrant was not issued.

22 That was part of the problem, so normally --

23 Q. So Drinks Americas refused to

24 exercise -- withdrawn. Drinks Americas refused to

25 issue the 217,500 warrants, correct?

□

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1 A. Correct.

2 Q. And so the only warrant that
3 actually was issued was the May 2005 warrant that
4 was issued, according to your testimony,
5 erroneously to Sloan Equity Partners, correct?
6 That's the only one that was actually issued?

7 A. That is correct. Aside from those two
8 individual investors, the only one that was ever
9 issued to pay Sloan Securities Corp. was exactly,
10 as you just stated, the one for 300,000 that was
11 erroneously issued to Sloan Equity Partners.

12 Q. Has that warrant, the 300,000
13 warrant, ever been assigned to Phillip Kassai?

14 A. By a separate piece of paper or by a
15 request by me? I would have to look --

16 Q. In any way.

17 A. I would have to look at the documents.

18 We sent a transmittal letter to
19 Drinks with the actual warrant.

20 Q. Asking for something to happen?

21 MS. WALSH: Well, I object.

22 MR. GOPSTEIN: You can just ignore
23 that. She can object. It's her right.

24 A. Okay. We asked -- I believe you should
25 have a copy of that. That was sent to Drinks.

60

1 Q. And what did it say?

2 A. I believe it asked for the warrant to be
3 exercised, and I don't remember if we broke it
4 down as to the numbers as to who got what.

5 MS. WALSH: I'm going to object to
6 the -- asking him to quote verbatim from a
7 document that has been produced.

8 MR. GOPSTEIN: You can object.

9 MS. WALSH: So if you have a
10 document that you can show him.

11 MR. ROSS: Do you have a document
12 that you can put in front of him you can ask him
13 about?

14 MR. GOPSTEIN: No.

15 THE WITNESS: You don't have that
16 document.

17 BY MR. GOPSTEIN:

18 Q. I don't have the -- I don't know
19 what you're referring to. That's why I'm asking.

20 A. I'm referring to the request that Sloan
21 Securities Corp. sent to Drinks Americas asking
22 that the warrant be properly issued to Sloan
23 Securities Corp. and then converted.

24 Q. So this is the warrant that was
25 erroneously issued to Sloan Equity Partners --

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1 A. Yes.

2 Q. -- you're saying you requested that
3 it be issued to Sloan Securities Corp.?

4 A. In writing, yes.

5 Q. Did Sloan Equity Partners ever
6 write anything or make any demand of Drinks
7 Americas since --

8 MS. WALSH: Objection --

9 Q. -- since it was issued to Sloan
10 Equities Partners?

11 A. Yes. I believe we actually all executed a
12 document affirming that it should be issued to
13 Sloan Securities Corp.

14 Q. And then Sloan Securities Corp.
15 wanted it reissued to various people, correct?

16 A. I don't remember what the document actually
17 said. We can look at the document but that is, as
18 I stated previously, that is our normal course,
19 that once we execute a warrant we assign it to the
20 individual reps according to how we parcel it out.

21 Q. Okay. Other than demands that were
22 made by Sloan Securities Corp. to Drinks Americas
23 to either exercise or assign or do something with
24 these warrants, there's no actual assignment of
25 the warrant from either Sloan Securities or Sloan

□

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1 Equity Partners to Phillip Kassai, is there?

2 MS. WALSH: Objection.

3 A. I believe that's incorrect actually.

4 Q. Where is that document?

5 A. Counsel showed it to me an hour and a half
6 ago. We had documents that Dan Myers, Phil Kassai
7 and myself, James Ackerman, executed assigning
8 those warrants from Sloan Equity Partners to Sloan
9 Securities Corp.

10 Q. Without the consent of Drinks
11 Americas?

12 A. Well, asking that it be reissued and
13 assigned.

14 Q. That's this letter, isn't it?

15 MS. WALSH: No.

16 A. No, that is not. There's another document.
17 No.

18 Q. There's another document again
19 asking Drinks Americas to do that for you,
20 correct?

21 A. Yes. But you asked if there's a document
22 for the assignment of and the answer to your
23 question is yes.

24 MR. GOPSTEIN: Well, possibly
25 counsel, since she has these documents with her,

□

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1 would help us out because I am not sure what

2 you're referring to and would you mind?

3 MS. WALSH: I am happy to.

4 These are documents that were
5 produced by plaintiffs that bear the Bates stamps
6 numbers PK, as in Phil Kassai, 091, 092, 093 and
7 090. They were also marked at the deposition as
8 Plaintiff's 29, Plaintiff's 31 and Plaintiff's 30
9 MR.

10 GOPSTEIN: Let me take a quick look
11 at them to see -- it may be duplicates of the same
12 documents.

13 (Discussion off the record.)

14 (Luncheon recess at 1:02 p.m.)

15 (Afternoon session resumed at 1:45
16 p.m.)

17 (Ms. Walsh is no longer present at
18 the deposition.)

19 BY MR. GOPSTEIN:

20 Q. Good afternoon, Mr. Ackerman. I'm
21 going try to piece together some of the documents
22 here that we began to discuss earlier.

23 Let me first show you what has been
24 marked as Plaintiff's Exhibit 31. It's a two-page
25 document. It's a fax cover sheet from Amy May to

□

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1 Phil Kassai with a letter attached to it dated
2 December 15, 2006.

3 Are you familiar with these two

4 documents?

5 A. Yes.

6 Q. Could you explain to me what you
7 were trying to accomplish in the letter dated
8 December 15, 2006?

9 A. Yes. As I had stated earlier, the stock
10 purchase warrant issued May 9th, 2005 for 300,000
11 shares was issued erroneously to Sloan Equity
12 Partners and should have been issued to Sloan
13 Securities Corp. That's what I state here in the
14 letter, and I ask Drinks Americas to please
15 re-issue the warrant.

16 I also ask for additional warrants
17 that we never got.

18 Q. What is the basis of your request
19 for an additional 67,500 warrants in this letter?

20 A. That was for the raise that we did of the
21 1.350. Just my math was bad, which was pointed
22 out to me later. It should have been the 217,500
23 shares, but that was for the raise. We had never
24 gotten any warrants for that either, so I was
25 trying to clean everything up as I could.

□

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1 Q. What were you demanding in this
2 letter, 367,500 warrants?

3 A. Well, we had already been issued the
4 300,000 and I was asking that it be reissued to

5 Sloan Securities Corp., and then I was asking for
6 the 67,500 warrants that were due under the
7 investment banking agreement that we had never
8 received.

9 Q. Where were you due or pursuant to
10 what clause and what agreement were you due 67,500
11 warrants?

12 A. I believe it was the December 2004 and I
13 think I --

14 Q. Do you want to take a look at it?

15 A. No. Actually I think I cited it in another
16 letter when I asked for them to be reassigned.

17 Q. I'm just trying to be clear here.
18 Wasn't the 300,000 -- wasn't the stock purchase
19 warrant for 300,000 shares issued May 9, 2005
20 allegedly for service rendered pursuant to the
21 investment banking agreement of December 2004?

22 A. It would have been covered under that, yes,
23 but I don't think that that had covered the money
24 raise as well.

25 Q. What money raise?

□

66

1 A. The \$1,350,000.

2 Q. Okay. So your saying that the
3 warrant for 300,000 shares issued on May 9, 2005
4 was not in consideration for the raising of
5 \$1,350,000?

6 A. I think it was for signing up the

7 investment banking agreements.

8 Q. Can you point to any language in
9 any document that entitles Sloan Securities Corp.
10 or Sloan Equity Partners to 300,000 warrants on
11 the execution of any document?

12 A. The language actually said a hundred
13 thousand I believe.

14 Q. Are you sure you're talking about
15 the December '04 agreement?

16 A. No. It could be the '05.

17 Q. All right.

18 A. No, I'm not sure.

19 Q. Okay. Take a look at the December
20 '04 agreement --

21 A. Sure.

22 Q. -- and show me where you get any
23 warrants on the execution of that agreement.

24 A. Sure.

25 Okay. This one is the one that

□

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1 allows for the 214,500 warrants. This is the --

2 Q. You mean two hundred seventeen
3 five?

4 A. Yes. Excuse me, thank you, the two hundred
5 seventeen five.

6 Q. And when you say this is the one,
7 you're referring to the December '04 agreement?

8 A. I believe so, yes.

9 Q. All right. Are you entitled to any
10 warrants at all for arranging a bridge financing
11 pursuant to the December 2004 investment banking
12 agreement?

13 A. I don't know. I guess that's the subject
14 of this litigation.

15 Q. How then would you be entitled to
16 warrants for 300,000 shares pursuant to that
17 agreement?

18 A. I don't know.

19 Q. So what is the basis for your
20 demand for 67,500 warrants in your December 15,
21 '06 letter?

22 A. That was an erroneous calculation. Those
23 would have been the 217,500 under the agreement
24 for raising the 1.35 million.

25 Q. So you're saying that instead of

□

68

1 demanding 67,500 warrants you should have demanded
2 217,500 warrants?

3 A. Yes.

4 Q. So are you then saying that you're
5 entitled to 217,500 warrants plus the 300,000
6 warrants?

7 A. It's possible. That's what was issued to
8 us.

9 Q. What I'm trying to get at is what

10 was your understanding what you're entitled to. I
11 know you indicated that the 300,000 warrant was
12 issued erroneously to Sloan Equity Partners.

13 A. Right.

14 Q. I'm trying to determine how the
15 number was arrived at.

16 A. You'd have to ask Mr. Klein.

17 Q. How about -- were you involved in
18 any way, shape or form in the preparation or the
19 execution of the stock purchase warrant for
20 300,000 shares dated May 9, 2005?

21 A. No.

22 Q. Did you authorize Dan Myers --
23 well, withdrawn.

24 Who prepared the stock purchase
25 warrant dated May 9, 2005?

□

69

1 A. You would have to ask Mr. Klein. I don't
2 know. My answer is I don't know. You would have
3 to ask Mr. Klein.

4 Q. Did you have any role whatsoever in
5 the preparation of that document?

6 A. I did not.

7 Q. Did you authorize the preparation
8 of that document?

9 A. It's not for me to authorize a public
10 company to issue a warrant, so the answer to your

11 question is no.

12 Q. Well, were you involved in the
13 execution of the warrant?

14 A. Again, a warrant being issued by a public
15 company, I don't have authority to do that.

16 Q. Well, do you know whether that
17 warrant was issued in your office on Madison
18 Avenue in New York?

19 A. No, I have no idea.

20 Q. Do you know who prepared it?

21 A. No. You asked me that before and I said
22 you'd have to ask Mr. Klein.

23 Q. Frankly we have asked Mr. Klein
24 and --

25 A. Super.

□

70

1 Q. -- and we've also asked Mr. Myers.

2 A. Super.

3 Q. And apparently the document was
4 drafted by * Littman and Crux, your attorneys.

5 A. Okay.

6 Q. Does that help -- now that I've
7 told you --

8 A. No.

9 Q. -- does that help refresh your
10 recollection?

11 A. No.

12 Q. Did you direct your attorneys to

13 draft the stock purchase warrant on May 9, 2005?

14 A. I did not.

15 Q. Did you direct Dan Myers to have

16 your attorneys draft that document?

17 A. I did not.

18 Q. Other than what you've testified to

19 here today do you have any knowledge at all of how

20 the stock purchase warrant dated May 9, 2005 came

21 about?

22 A. I do not.

23 Q. Do you know what the May 9, 2005

24 stock purchase warrant relates to in terms of why

25 it was issued?

□

71

1 A. I was assuming that it related to the

2 investment banking agreement that we signed in

3 2005 where we were entitled to warrants for

4 signing that and we had never received.

5 Q. So that brings us back to my

6 earlier question. What is your understanding as

7 the president of Sloan Securities Corp. who

8 handled this account with Drinks Americas as to

9 your -- as to the reason or the entitlement of

10 300,000 warrants of shares?

11 A. I've already answered it to the best of my

12 ability.

13 Q. Is there any document that you're

14 aware of that gives you the right to 300,000
15 warrants?

16 A. I believe the 2005 one gives us the right
17 to a hundred thousand.

18 Q. But the 2005 investment banking
19 agreement was executed in September of 2005,
20 correct?

21 A. Right, right.

22 Q. So the May 9, 2005 warrant
23 predated --

24 A. Correct.

25 Q. -- the 2005 investment banking

□

72

1 agreement?

2 A. Right.

3 Q. So it couldn't have been related to
4 that, correct?

5 A. If -- that's your answer.

6 Q. Well, let me ask you -- let me get
7 your answer. Is it even possible --

8 A. No, it does not seem likely.

9 Q. Let me finish the question.

10 Is it even possible that the stock
11 purchase warrant that was issued on May 9, 2005
12 had anything to do with the investment banking
13 agreement that was subsequently signed in
14 September of 2005?

15 A. No.

16 Q. So it could only have related to
17 the prior investment banking agreement from
18 December of 2004, correct?

19 A. Correct.

20 Q. All right. Try then to the best of
21 your abilities to explain to me where or how under
22 the 2004 investment banking agreement Sloan
23 Securities or Sloan Equity Partners was entitled
24 to warrants for 300,000 shares.

25 A. I don't see anything under here.

□

73

1 Q. Let me put before you now what has
2 been previously marked as Plaintiff's Exhibit 30,
3 and we have different versions of them as we
4 indicated off the record. They appear to be the
5 same letter but signed by different parties.

6 It's a letter dated January 25,
7 2007 on the letterhead of Sloan Equity Partners.
8 And I'll show the different versions of it. In
9 fact one of the versions is marked Plaintiff's
10 Exhibit 6.

11 Could you tell me what you were
12 trying to accomplish with this letter on January
13 25, 2007?

14 A. Yes. This letter which was signed by
15 myself, Dan Myers and Phil Kassai was assigning
16 the 300,000 warrants to the individuals that were

17 entitled to receive them, and we listed the
18 individuals and the number of shares that they
19 should be getting, and this was sent to
20 Mr. Klein's attention, the chairman of Drinks
21 Americas.

22 Q. Again, as indicated earlier, this
23 is nothing more than your expression of a desire
24 to assign and exercise the warranty; correct?

25 A. No. This is my intention to assign the

□

74

1 warrant as is my right as CEO of Sloan Securities
2 Corp. for a warrant that should have been issued
3 to Sloan Securities Corp.

4 We did not have any other documents
5 to do it, and I -- you know, this was our attempt
6 to assign them as is stated here.

7 Q. Let me direct your attention to the
8 second sentence. Could you just read that second
9 sentence.

10 A. "As such please allow this letter to serve
11 as SEP's" -- or Sloan Equity Partners' -- "desire
12 to assign and exercise the warranty as follows."

13 Q. So prior to January 25, 2007 the
14 warrant had not been assigned or exercised as of
15 yet? You were desiring to do that, correct?

16 A. Correct.

17 Q. Let's then move ahead to April 2,
18 2007, and Plaintiff's Exhibit 18. Again, could

19 you just read the last phrase of that first
20 sentence starting with the word "please?"

21 A. "Please allow this letter to serve as
22 Sloan's desire to assign and exercise the warrant
23 as follows."

24 Q. Okay. So you're again on April 2nd
25 of 2007 indicating your desire to assign and

□

75

1 exercise the warrant; correct?

2 A. This is the assignment as far as I'm
3 concerned.

4 MR. ROSS: Excuse me. I just want
5 to point out for the record that the document that
6 you showed us -- showed the witness, Plaintiff's
7 Exhibit 6, actually relates to 300,000 shares, and
8 the document you're now questioning which is
9 Plaintiff's Exhibit 18 is with respect to the
10 217,000, so they're actually talking about two
11 different things. These are two different
12 documents issued by two different parties or
13 letters I should say.

14 THE WITNESS: Talking about two
15 different ones.

16 MR. ROSS: I just want to point
17 that out.

18 BY MR. GOPSTEIN:

19 Q. Right. The first letter that we

20 were talking about which is Plaintiff's Exhibit 6
21 is from Sloan Equity Partners, correct?
22 A. Correct.
23 Q. And they are indicating their
24 desire to assign and exercise the warrant for
25 300,000 shares, correct?

□

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1 A. Correct.
2 Q. And prior to that time it had not
3 been assigned or exercised. Correct?
4 A. Correct.
5 Q. Okay. So then we move to
6 Plaintiff's Exhibit 18 which is a letter from
7 Sloan Securities Corp. to Drinks Americas
8 regarding the warrant for 217,500 shares.
9 Again, here Sloan Securities Corp.
10 is indicating their desire to assign and exercise
11 the warrant; correct?
12 A. Ah-hum, yes.
13 Q. Prior to this letter on April 2,
14 2007 there had not been any assignment or exercise
15 of the warrant. You were desiring to do so,
16 correct?
17 A. Yes, correct.
18 Q. So this day as we sit here today
19 has either the warrant for 300,000 shares or the
20 alleged warrant for 217,500 warrants actually been
21 assigned or exercised?

22 A. Not to my knowledge, no.

23 Q. Does any of this help refresh your

24 recollection as to when you heard from Joe

25 Kannella that the warrant or the warrants were in

□

77

1 dispute or not authorized or words to that effect?

2 A. No.

3 Q. It doesn't help you?

4 A. No.

5 Q. Can you tell me where in the

6 2004 -- the December 2004 investment banking

7 agreement Sloan Securities is entitled to 217,500

8 shares or warrants for shares?

9 A. I believe it says in the letter. I believe

10 it cites a paragraph.

11 Q. Paragraph 4.1.

12 A. (The witness nods his head.)

13 Q. Do you know what section of 4.1 you

14 were referring to, and I'll show you the document?

15 A. No. I would have to --

16 Q. Would it be 4.1A or 4.1B?

17 A. A.

18 Q. Does 4.1A deal with the bridge

19 financing, according to your understanding of the

20 agreement?

21 (Discussion off the record.)

22 Q. Your answer is? I'm sorry.

23 A. No.

24 MR. ROSS: Could you repeat the
25 question just to make sure we're accurate.

□

78

1 Q. Yes. Does paragraph 4.1A have
2 anything to do with the bridge financing?

3 A. I'm not sure what you mean by having
4 anything to do with.

5 Q. Let me rephrase it. Let me
6 rephrase that.

7 Does paragraph 4.1A deal with
8 compensation that you might be entitled to in
9 connection with the bridge financing?

10 A. 4.1 -- 4.1 in my opinion has to do with
11 both any financing and a bridge financing.

12 Q. I'm talking about 4.1A as opposed
13 to 4.1B.

14 A. Correct.

15 Q. Isn't it true that -- let me ask it
16 a different way then. Isn't it true that
17 paragraph 4.1B deals with the compensation due to
18 Sloan Securities Corp. for the bridge financing?

19 A. Not solely, no.

20 Q. Well, do you see the word "bridge
21 financing" anywhere in 4.1A?

22 A. No, I do not see the word "bridge
23 financing" anywhere in 4.1A.

24 Q. I'll take it back. Thanks.

25 Have you ever had any conversations

□

79

1 with Dan Myers about the preparation or execution
2 of the May 2005 stock purchase warrant?

3 A. Yes.

4 Q. When is the first time you talked
5 to him about that?

6 A. I don't remember.

7 Q. What did you talk about to the best
8 of your recollection?

9 A. We talked about the -- I -- the first time
10 we talked about it I was upset that it had been
11 issued to Sloan Equity Partners because that was a
12 wrong thing that was done, and I wanted to get it
13 corrected.

14 Q. And when is the last time you
15 talked to Dan Myers about that?

16 A. I don't remember.

17 Q. Have you -- what else have you
18 talked to him about beside the fact that you
19 thought it was a mistake to issue it to Sloan
20 Equity Partners?

21 A. That it had to get changed to Sloan
22 Securities Corp. and how dare he direct that it go
23 into that, and how furious I was.

24 Q. And was this sometime shortly after
25 the warrant was issued or was it sometime after

80

1 that?

2 A. It was way after it was issued.

3 Q. When is the first time that you
4 even knew that the stock purchase warrant had been
5 issued, the May 9 warrant?

6 A. I want to say late 2006 maybe.

7 Q. So you found out about this
8 approximately a year and a half after it was
9 signed?

10 A. Correct. Right.

11 Q. Who were the people at Sloan
12 Securities who worked on raising money for Drinks
13 Americas?

14 A. Dan Myers, Phil Kassai, Frank Engracia,
15 Patrick Murphy and myself.

16 Q. Did you supervise all of the other
17 individuals in connection with the firm's
18 relationship with Drinks Americas?

19 A. No.

20 Q. Who did?

21 A. It was split up because there were
22 different offices. Dan was in one office, so I
23 was supervising him and Phil Kassai, and then
24 Patrick was his own OSJ, office supervisory
25 jurisdiction, and so he was the supervisor there,

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1 and he and Frank worked together with their
2 investors.

3 Q. What office did Dan and Phil work
4 out of?

5 A. 444 Madison Avenue.

6 Q. And were you primarily responsible
7 for supervising them at that office?

8 A. Yes.

9 Q. Who brought the client, Drinks
10 Americas, into the company?

11 A. Dan Myers.

12 Q. Was he the primary investment
13 banker on the deal?

14 A. Yes.

15 Q. I don't have the documents that
16 were marked by plaintiff's counsel earlier today,
17 but some of these documents were produced on late
18 Friday by your counsel, and so if I'm re-marking
19 them I apologize.

20 I want to should you what I'm going
21 to call the securities purchase agreement dated
22 November 2005, and we'll mark that as
23 Defendant's G.

24 (Securities Purchase Agreement By
25 and Between Drinks Americas Holdings, Ltd., and

□

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1 the Investors Named Herein is marked as D-G for
2 identification.)

3 Q. That's an unsigned document.

4 That's all I got from your attorney. Do you
5 recognize that?

6 A. Yes.

7 Q. What is the intent of that
8 document?

9 A. For Drinks Americas to sell certain
10 securities to investors that were brought to them
11 by Sloan Securities.

12 Q. Did that securities purchase
13 agreement have anything to do with the December
14 2004 investment banking agreement or did that
15 relate to the September '05 agreement?

16 A. I'm not sure. I would have to examine all
17 the documents again. I'm not sure.

18 Q. I'm going to show you what we will
19 refer to as Defendant's H?

20 (Letter dated September 29, 2005 is
21 marked as D-H for identification.)

22 Q. It's a December 29, 2005 investment
23 banking agreement that I also received from your
24 attorney. Do you recognize that document?

25 A. Yes.

□

83

1 Q. Did you negotiate that document?

2 A. With Dan and with Bruce Klein, yes.

3 Q. What was the purpose of the second
4 investment banking agreement?

5 A. This is when we were looking to do the
6 bridge financing.

7 Q. Well, hadn't you already done a
8 bridge financing for Drinks Americas the year
9 before or in the spring of 2005?

10 A. I'm trying to -- when the 1.35 was done?

11 Q. Yes.

12 A. Yes. We had done that before.

13 Q. So were you doing an additional
14 bridge financing?

15 A. I guess we were looking to raise more money
16 for them.

17 Q. In what form? Take a look at it
18 and try to describe --

19 MR. ROSS: Can we see the other
20 one, the previous agreement?

21 MR. GOPSTEIN: Sure. It's actually
22 right here.

23 A. Oh, yes, right, we were trying to raise
24 between six million and ten million for them.

25 MR. ROSS: Can I see this for a

□

84

1 minute.

2 THE WITNESS: Sure.

3 MR. ROSS: I just want you to

4 compare this to the December 27th because six and
5 ten million is also mentioned there, so I don't
6 know if that's just a continuation of that desire
7 or if it refreshes you in any way.

8 A. No.

9 Q. I'm trying to get at the exact same
10 question.

11 What was the reason for the second
12 investment banking agreement a year later?

13 A. I don't remember.

14 Q. Was it just to try to raise some
15 more capital?

16 A. It looks that way, yeah. I would have to
17 take a look at the documents and see if there's
18 any difference.

19 Q. Okay. Based upon your
20 recollection, other than telling me the difference
21 between the two documents, what was going on at
22 the time that --

23 A. That Drinks needed more money. We were
24 trying to raise more money for them.

25 Q. Okay. Now, could you go back and

□

85

1 take a look at the Defendant's Exhibit G, the
2 securities purchase agreement, which is unsigned
3 and dated November.

4 Does that help refresh your

5 recollection as to whether that was a pro forma
6 document that was generated in connection with the
7 September '05 agreement?

8 A. It really doesn't.

9 Q. You have no idea?

10 A. I really don't remember.

11 Q. How about Defendant's I?

12 (Promissory note is marked as D-I
13 for identification.)

14 Q. The ten percent senior convertible
15 promissory note also appears to be a blank
16 document dated November of 2005. Do you recognize
17 that?

18 A. I think this is what we used for the
19 investors with the 1.35 million that we raised for
20 them.

21 Q. Are you sure about that?

22 A. No. Am I sure, no.

23 Q. Does it --

24 A. But I remember it being a ten percent
25 senior convertible promissory note.

□

86

1 Q. All right --

2 A. So am I sure that this is the exact
3 document, no.

4 Q. But didn't you raise the 1,350,000
5 in the early part of 2005?

6 A. Ah-hum.

7 Q. Okay. So this is a blank document
8 in November of 2005. Wouldn't that tell you that
9 this is a document that was generated in
10 connection with the second investment banking
11 agreement?

12 A. It could be. I don't remember.

13 Q. You're just not sure?

14 A. The second investment banking agreement --

15 Q. Dated September 2nd of 2005.

16 A. Right. It could be.

17 Q. Okay. And similarly I'm going to
18 show you what I'm going to refer to as
19 Defendant's J.

20 (Discussion off the record.)

21 (Drinks Americas Holdings, Ltd.,
22 Registration Rights Agreement is marked as D-J for
23 identification.)

24 BY MR. GOPSTEIN:

25 Q. We had a brief colloquy off the

□

87

1 record and may or may not shed some light on some
2 of this, so let's try.

3 Defendant's J is a registration
4 rights agreement also dated November 2005 and also
5 a blank document. Do you recognize that?

6 A. No, not really.

7 Q. Do you know whether that document

8 was generated in connection with the September `05
9 agreement or the December `04 agreement?

10 A. Wait a second.

11 MR. GOPSTEIN: Let's go off the
12 record.

13 (Discussion off the record.)

14 BY MR. GOPSTEIN:

15 Q. We're back on the record.

16 Do you have an understanding of
17 what this registration rights agreement might be?

18 A. It looks like an agreement to register the
19 stock holdings and underlying warrants of my
20 clients who invested in the transaction
21 previously, and it also has a list of other
22 security holders that it looks like that Drinks
23 Americas is registering their stock holdings as
24 well.

25 MR. GOPSTEIN: Okay. Now, let me

□

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1 show you two escrow deposit agreements, and we'll
2 mark these as Defendant's K and L.

3 (Escrow deposit agreement is marked
4 as D-K for identification.)

5 (Escrow deposit agreement is marked
6 as D-L the for identification.)

7 BY MR. GOPSTEIN:

8 Q. Could you shed some light on these
9 escrow deposit agreements? Tell me what they were

10 used for. Just read off the dates on the two of
11 them.

12 A. The 17th day of November 2005.

13 Q. And the other one is?

14 A. 22nd day of November 2005.

15 Q. Do you know what these escrow
16 agreements were used for?

17 A. No, I don't.

18 Q. No idea?

19 A. No.

20 Q. Did you sign them?

21 A. I don't remember.

22 MR. ROSS: Is that what we were
23 discussing earlier? (Indicating).

24 Q. Any idea?

25 A. No, I don't.

□

89

1 Q. Is that not your signature on page
2 ten of Defendant's Exhibit L?

3 A. That is my signature.

4 Q. And is it also your signature on
5 pages ten and 12 of Exhibit K?

6 A. Yes, that's my signature.

7 Q. Do you recall signing these
8 documents?

9 A. I do not.

10 Q. You have no understanding of what

11 was to be accomplished in these escrow agreements?

12 A. Uh-huh.

13 Q. That's a no?

14 A. That's a no.

15 Q. Okay. Did Sloan Securities Corp.

16 raise any money for Drinks Americas at any time

17 other than the bridge financing that you did of

18 \$1,350,000?

19 A. No.

20 Q. So there was no money raised

21 whatsoever pursuant to the second investment

22 banking agreement --

23 A. Correct.

24 Q. -- in --

25 A. Sorry.

□

90

1 Q. -- in September of 2005, right?

2 A. Correct.

3 Q. Did you indicate or do you recall

4 indicating to Drinks Americas that you had

5 investors lined up or you had any financing in

6 place in connection with the September '05

7 investment banking agreement?

8 A. I don't recall making an indication of that

9 to Drinks.

10 Q. Do you know why you were not

11 successful in raising any money pursuant to the

12 second investment banking agreement in September

13 of '05?

14 A. I don't remember.

15 Q. Are you aware that Dan Myers has
16 signed an affidavit in connection with this
17 litigation?

18 A. No.

19 Q. You've not seen it?

20 A. No.

21 Q. Have you talked to him about it?

22 A. No.

23 Q. Have you talked to Phil Kassai
24 about Dan Myers' affidavit?

25 A. No.

□

91

1 Q. Dan was the principal investment
2 banker on -- in connection with Drinks Americas,
3 correct?

4 A. Yes.

5 Q. And he would be most knowledgeable
6 in connection with what did or did not take place
7 in relation to Drinks Americas?

8 A. Generally, yes.

9 MR. GOPSTEIN: I have no further
10 questions. Thank you.

11 (Discussion off the record.)

12 MR. ROSS: Robert Ross representing
13 Mr. Ackerman.

14 Mr. Ackerman was the subject of two
15 subpoenas from both Mr. Kassai's counsel and
16 Drinks Americas' counsel. One subpoena was in his
17 capacity as president CEO of Sloan Securities
18 Corp. One subpoena was issued to Sloan Equity
19 Partners.

20 MR. GOPSTEIN: Can I correct you?

21 MR. ROSS: Please do.

22 MR. GOPSTEIN: Mr. Ackerman
23 actually received two subpoenas from my firm. He
24 received a subpoena for Sloan Securities Corp. and
25 a subpoena for Sloan Equity Partners. He received

□

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1 a third subpoena from plaintiff's counsel, and I
2 don't know what that was.

3 MR. ROSS: That's correct. Which
4 was also very similar in sum and substance in
5 terms of on whose behalf Mr. Ackerman is
6 appearing.

7 Mr. Ackerman, as he stated in the
8 testimony, was a minority or is a minority member
9 of Sloan Equity Partners, but has stated on the
10 record that he doesn't have the -- or if he didn't
11 I'm stating on the record -- doesn't have the
12 authority or is not taking that position to bind
13 that company in these proceedings.

14 So to the extent that he's
15 testifying today, he's testified as the CEO and

16 president of Sloan Securities Corp. and also as a
17 member of Sloan Equity Partners but not as a
18 representative of Sloan Equity Partners, meaning
19 that whatever testimony he gave today is not
20 necessarily the position of Sloan Equity Partners
21 as an entity, if anyone has such a position or
22 cares about such a position. Okay? Is that
23 accurate, Jim?

24 THE WITNESS: Yes.

25 MR. GOPSTEIN: We'll leave it I

□

93

1 guess to the court to determine whether -- what
2 effect his testimony might have on various
3 entities.

4 I'm okay with the fact that he was
5 here testifying as a -- as the president CEO of
6 Sloan Securities Corp. and as a, I believe, 40
7 percent partner of Sloan Equities.

8 THE WITNESS: 20 percent.

9 MR. GOPSTEIN: 20 percent, I'm
10 sorry.

11 THE WITNESS: That's okay.

12 MR. GOPSTEIN: As a 20 percent
13 partner of Sloan Equity Partners, and whatever
14 impact his testimony has is what it has.

15 MR. ROSS: Okay.

16 MR. GOPSTEIN: Thank you.

17 (The proceedings are concluded at
18 2:42 p.m.)
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1 C E R T I F I C A T I O N

2

3 I, HELEN DOHOGNE, a Certified
4 Shorthand Reporter and Notary Public of the State
5 of New Jersey, do hereby certify that prior to the
6 commencement of the deposition the witness was
7 duly sworn by me to tell the truth, the whole
8 truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the
10 foregoing is a true and accurate transcript of the
11 testimony as taken stenographically by and before
12 me at the time, place and on the date herein
13 before set forth.

14 I DO FURTHER CERTIFY that I am
15 neither a relative nor employee nor attorney nor
16 counsel of any of the parties to this action and
17 that I am neither a relative nor employee of said
18 attorney or counsel and that I am not financially

19 interested in the outcome of the case.

20

21

22

23 C.S.R. License Number 30XI00079800
24 Notary Public of the
25 State of New Jersey
My Commission Expires 12-20-09

□

EXHIBIT E

12-12-07 phillip kassai v drinks america holdings - kassai.txt

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PHILLIP KASSAI,

6

Plaintiff,

7

vs. No. 07 Civ 5590

8

DRINKS AMERICA HOLDINGS, LTD.,

9

Defendant.

10

11

12

13

DEPOSITION OF PHILLIP KASSAI

14

New York, New York

15

wednesday, December 12th, 2007

16

17

Reported by:

18

Jeremy Frank, MPM

19

20

21

22

23

HUDSON REPORTING & VIDEO, INC.

24

124 West 30th Street, 2nd Fl.

25

New York, New York 10001

Tel: 212-273-9911 Fax: 212-273-9915

□

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December 12th, 2007

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2:15 p.m.

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Deposition of PHILLIP KASSAI, held at
the offices of Moskowitz & Book, LLP, 1372
Broadway, New York, New York, pursuant to
Notice, before Jeremy Frank, a Notary Public
of the State of New York.

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12-12-07 phillip kassai v drinks america holdings - kassai.txt
A P P E A R A N C E S:

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BY: SHELDON H. GOPSTEIN, ESQ.

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IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective
parties hereto, that the filing, sealing and
certification of the within deposition shall
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same force
and effect as if signed and sworn to before
the Court.

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Kassai
P H I L L I P K A S S A I, called as a
witness, having been duly affirmed by a Notary
Public, was examined and testified as follows:
EXAMINATION BY
MR. GOPSTEIN:

Q. State your name for the record.
A. Phillip Kassai.
Q. State your address for the record.
A. 16 Auerbach Lane, Lawrence, New

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York 11559.

Q. Good afternoon, Mr. Kassai. My name is Sheldon Gopstein, I represent the defendant in this case, Drinks Americas in an action that you brought against them that's pending in the Federal Court, it is actually Drinks Americas Holdings, LTD.

What is your office address?

MS. WALSH: I am just going to reserve all objections for the record.

MR. GOPSTEIN: Have we been operating under that stipulation all along or not, I thought we were.

MS. WALSH: I don't know that we were but I want to reserve them for today

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Kassai
for Mr. Kassai.

MR. GOPSTEIN: Okay.

It is my understanding that we had been operating under the stipulation that all objections except as to form were reserved, of course there are other grounds.

Q. But Mr. Kassai, what is your business address?

A. 444 Madison Avenue, 18th floor, New York, New York 10022.

Q. Have you ever been deposed before?

A. No.

Q. Have you ever been a party in a lawsuit meaning either a plaintiff or a defendant in a lawsuit?

A. Yes.

Q. Other than this one?

A. Yes.

Q. Can you tell me is it a presently pending case?

A. Yes.

Q. Okay.

Can you give me the caption or who

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Kassai
the parties in that dispute are?

A. Dell, D-e-l-l.

Q. Dell Computers?

A. Yes.

MS. WALSH: You have to say yes or no, its for him to get the transcript.

A. Yes, Dell Computers.

Q. Is Dell the plaintiff or the defendant in that case?

A. Plaintiff.

Q. Who are the defendants?

A. Phil Kassai.

Q. Who else?

A. That's it.

Q. What is the basis of that lawsuit in sum and substance?

A. This dates back to 2003 where the plaintiff says there is money owed for a

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computer and the defendant denies that.

Q. Okay.

Have you ever been involved in any other lawsuits as a plaintiff or a defendant?

A. Yes.

Q. Either civil or criminal?

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Kassai

A. Yes.

Q. Okay.

Tell me what that other proceeding was about.

A. I sued my landscaper.

Q. Other than that?

Tell me have you ever been involved as a plaintiff or defendant in any civil or criminal proceeding other than Dell, the action with your landscaper and the current action?

A. No.

Q. That's it?

A. That would be it.

Q. Okay.

You have not been deposed before in any of those cases?

A. No.

Q. Or in any other case?

A. No.

Q. Since this is the very first time you have ever given a deposition, let me just give you some of the ground rules. If you don't understand anything I'm asking you,

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Kassai

don't answer the question, ask me to rephrase it and I'll be more than happy to do that. If you need to take a break for any reason, you should tell me and I'll be more than happy to accommodate you. If you need to speak to your attorney, I would ask that you not do so while a question is pending. I need you to answer the question first and then if for some reason you need to confer with your attorney, you can do it at that time.

Are you under, are you taking any medication or is there any reason why you wouldn't be able to give complete and truthful testimony here today?

A. No.

Q. Okay.

MR. GOPSTEIN: Can we go off the record.

(Whereupon, an off-the-record discussion was held.)

(Time noted: 2:20 p.m.)

(Time noted: 2:29 p.m.)

Q. Mr. Kassai, are you currently employed?

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Kassai

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2 A. Self-employed.
3 Q. What is your business?
4 A. Merchant banking.
5 Q. Are you a self-employed merchant
6 banker at 444 Madison Avenue on the 18th
7 floor?
8 A. Yes.
9 Q. You rent space there?
10 A. Yes.
11 Q. What is the name of the entity
12 that rents the space that you're working in?
13 In what entity have you leased the space, in
14 your own name or --
15 A. Phillip Kassai, yes.
16 Q. You're the actual tenant of that
17 space?
18 A. Yes.
19 Q. Do you have the entire 18th floor?
20 A. No.
21 Q. What portion of the 18th floor do
22 you occupy?
23 A. A single office.
24 Q. Who do you rent that single office
25 from?

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1 Kassai
2 A. Realex Capital, R-e-a-l-e-x.
3 Q. How long have you been in that
4 space renting from Realex Capital?
5 A. Since my resignation from Sloan.
6 Q. Which was when?
7 A. I'm not, the exact date is not
8 known to me, sometime in June '06, I would
9 say.
10 Q. In June 2006 you resigned from
11 Sloan Securities and you became a
12 self-employed merchant banker?
13 A. Yes.
14 Q. You have been doing that from
15 June 2006 to the present?
16 A. Correct.
17 Q. Is Sloan Securities also located
18 at 444 Madison Avenue?
19 A. To the best of my knowledge, they
20 are.
21 Q. Did you work at 444 Madison when
22 you were employed by Sloan?
23 A. Yes.
24 Q. What floor?
25 A. 23rd.

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1 Kassai
2 Q. Okay.
3 Where did you work before Sloan?
4 A. Before Sloan I worked also on the
5 18th floor.
6 Q. For who?
7 A. Myself.
8 Q. As what?
9 A. Merchant banker.
10 Q. How long were you a self-employed

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merchant banker before you joined Sloan?

A. About one year.
Q. So this is approximately June '05
to June '06?

A. Its thereabouts, yes.
Q. Did you also rent space when you
were self-employed?

A. Yes.
Q. Also on the 18th floor?

A. Yes.
Q. Then you moved to the Sloan space
for a period of time?

A. Yes.
Q. Then you rented space on your own
again?

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Kassai
A. Yes.
Q. Does your current business have a
business name other than your name?
A. There is different entities that
are created to do business through. I'm not
quite sure what your --
Q. For instance, do you have a d/b/a,
do you do business under any name like Kassai
Merchant Banking or some other assumed name?

A. No, there are several entities
that deals get done through, there is not one
specific name.

Q. Do you create entities for the
particular deal or do you have existing
entities that you work through already?

A. Both.
Q. Okay.
Tell me the names of the entities
that you have established that you work your
deals through on occasion?

A. They would be Ocean Drive Capital.
Q. Is that a corporation?
A. An LLC.
Q. Is that a New York LLC?

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Kassai
A. Yes.
Q. Go ahead.
A. And Iska Capital Partners.
Q. Can you spell that?
A. I-s-k-a Capital Partners.
Q. What type of an entity is that?
A. An LLC.
Q. Anything else? Any other entities

that you do your business through as a
merchant banker?

A. No.
Q. Who are the members of Ocean Drive
Capital?

A. The members of Ocean Drive Capital
would be Phillip Kassai.

Q. That's you, right?
A. That would be me.
Q. Who else?

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20 A. And Mr. Dan Myers.
 21 Q. Okay.
 22 Is that 50/50?
 23 A. Yes.
 24 Q. Do you currently do deals with Dan
 25 Myers using the Ocean Drive Capital entity?

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1 Kassai
 2 A. No.
 3 Q. But Mr. Myers and yourself are
 4 still members, the sole members of that
 5 entity?
 6 A. Correct.
 7 Q. Okay.
 8 Does Ocean Drive Capital have any
 9 assets, does it own anything?
 10 A. No.
 11 Q. For what purpose is Ocean Drive
 12 Capital in existence today?
 13 A. Its not dissolved.
 14 Q. Do you intend to use it to do
 15 deals?
 16 A. No.
 17 Q. Have you ever done a deal in Ocean
 18 Drive Capital?
 19 MS. WALSH: Objection.
 20 Q. You can answer.
 21 MS. WALSH: Your time frames are a
 22 little broad. I didn't want to interfere
 23 but your time frames and your relevance
 24 because of that.
 25 You can answer.

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1 Kassai
 2 Q. Have you done any deals in Ocean
 3 Drive Capital?
 4 A. Please define deals.
 5 Q. Have you closed any transactions
 6 involving Ocean Drive Capital?
 7 A. No.
 8 Q. Why was Ocean Drive Capital
 9 formed?
 10 A. As an LLC as well as to establish
 11 a name.
 12 Q. Have you ever used Ocean Drive
 13 Capital for any purpose?
 14 A. Yes.
 15 Q. Okay.
 16 How have you used the entity?
 17 A. The entity has a checking account
 18 and at one point had a securities account
 19 which was used for holding securities or
 20 warrants.
 21 Q. Where was the securities account
 22 maintained?
 23 A. When?
 24 Q. Did it have more than one
 25 securities account?

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1 Kassai

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2 A. When?
 3 Q. At any time.
 4 A. Not to my knowledge.
 5 Q. Okay.
 6 So what securities firm did you
 7 open an account in in the name of Ocean Drive
 8 Capital?
 9 A. To the best of my knowledge, one
 10 was opened at Pond Securities.
 11 Q. Okay.
 12 when?
 13 A. I am not sure of the date.
 14 Q. Is it still open?
 15 A. Not to my knowledge.
 16 Q. Were any securities deposited in
 17 Pond Securities in the name of Ocean Drive
 18 Capital?
 19 A. I believe so.
 20 Q. What securities?
 21 A. I would have to go through
 22 statements to check that out.
 23 MR. GOPSTEIN: I would ask that you
 24 do so and inform us when you return the
 25 transcript.

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1 Kassai
 2 MS. WALSH: I reserve my
 3 objections.
 4 _____
 5 _____
 6 _____
 7 _____
 8 Q. When was Ocean Drive Capital
 9 formed?
 10 A. I don't recall the exact date.
 11 Q. All right.
 12 But it still is in existence
 13 today?
 14 A. Yes.
 15 Q. Okay.
 16 Tell me about Iska Capital
 17 Partners, when was that formed?
 18 Prior to Ocean Drive Capital.
 19 Q. Can you give me a year?
 20 A. Not off the top of my head, no.
 21 Q. Is Iska Capital still in
 22 existence?
 23 A. Yes.
 24 Q. For what purpose was Iska Capital
 25 formed?

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1 Kassai
 2 A. To make investments.
 3 Q. Who are the members of Iska
 4 Capital?
 5 A. I'm the member.
 6 Q. You're the sole member?
 7 A. No, my wife is a member as well.
 8 Q. Other than yourself and your wife,
 9 are there any other members of Iska Capital?
 10 A. No.

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11 Q. Have there ever been any other
12 members of Iska Capital?

13 A. No.

14 Q. Other than yourself and Dan Myers,
15 have there ever been any other members of
16 Ocean Drive Capital?

17 A. No.

18 Q. Okay.

19 Do you still do business, any sort
20 of business with Dan Myers?

21 A. There are past investments or
22 deals that we worked on together and those
23 deals continue to go forward so yes, there is
24 on those specific deals there is a working
25 relationship.

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1 Kassai

2 Q. Okay.

3 So you have an ongoing working
4 relationship with Dan Myers, but if I
5 understand you correctly, it all relates to
6 old business?

7 A. Correct.

8 Q. You're not currently doing any new
9 deals or doing any new transactions involving
10 Dan Myers?

11 A. Correct, not.

12 Q. Is there any reason why you're not
13 today?

14 A. We don't work together anymore.

15 Q. Is that the only reason?

16 A. We don't work together anymore.

17 Q. I'm just asking you if that's the
18 only reason. I understand you gave that as a
19 reason. Is that the only reason you're not
20 working with Dan Myers anymore?

21 Do you understand the question?

22 A. I think I answered the question.

23 Q. I understand that that is a
24 reason. My question is, is that the only
25 reason, are there any other reasons why you

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1 Kassai

2 are no longer working with Dan Myers on any
3 business?

4 A. Not to my knowledge.

5 Q. Do you currently have a good
6 working relationship with Dan Myers?

7 MS. WALSH: I object, it misstates
8 the testimony.

9 Q. Let me rephrase it.

10 Do you still have a good
11 relationship with Dan Myers?

12 A. No.

13 Q. Would you say that you are no
14 longer on good terms personally or
15 professionally?

16 MS. WALSH: It assumes facts aren't
17 in evidence but --

18 Q. You know him personally, correct?

19 A. Correct.

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20 Q. You have worked with him
21 professionally?
22 A. Correct.
23 Q. Are you still on good terms with
24 him?
25 A. Define good terms.

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1 Kassai
2 MR. GOPSTEIN: Read back the last
3 answer if you could to the prior
4 question, and maybe you should follow it
5 up if you wouldn't mind.
6 (Record read.)
7 Q. Why do you no longer have a good
8 relationship with Dan Myers?
9 A. We no longer work together.
10 Q. That doesn't necessarily mean that
11 you don't have a good relationship.
12 Is there anything other than the
13 fact that you are physically not working
14 together in the same office that would lead
15 you to say that you don't have a good
16 relationship with him?
17 A. Please rephrase, I'm not
18 understanding the question.
19 Q. I'm trying to follow up on an
20 answer that you gave. Rather than suggesting
21 anything, I just wanted to use the words that
22 you used. Let me rephrase this.
23 How would you describe your
24 relationship today with Dan Myers?
25 A. Cordial.

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1 Kassai
2 Q. Is there any animosity or conflict
3 that you are aware of between yourself and Dan
4 Myers at present?
5 A. At present, no.
6 Q. Okay.
7 So would you say you are presently
8 on good terms with Dan Myers even though you
9 don't work together?
10 A. I think I answered the question.
11 Q. Well, let's try to get a clearer
12 answer.
13 Would it be fair to say that you
14 are presently on good terms with Dan Myers
15 even though you don't work together anymore?
16 MS. WALSH: I think it was asked
17 and answered so I object. You can
18 answer.
19 A. I'll answer what I answered
20 earlier, I think I answered the question.
21 Q. I need you to answer it again
22 because I don't think you answered that
23 question, so I need you to tell me what your
24 answer is.
25 A. I said we have a cordial

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1 Kassai

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relationship.

Q. Okay.
When, if ever, did you not have a
cordial relationship with Dan Myers?

A. I don't know if there was a time.

Q. The reason I ask you that is
because you carefully said at present that the
relationship is cordial. I thought that
implied that it may not have been cordial at
some other time, so --

A. That's your implication, I
answered your question when you asked at
present.

MS. WALSH: Just answer the
questions.

Q. I'm going to be even more clear.
Throughout the time that you have
known Dan Myers has your relationship with him
always been cordial?

A. Yes.

Q. Have you ever had an instance
where you were in conflict with Mr. Myers on
any business transaction?

A. Yes.

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Kassai

Q. Okay.
Could you please describe that.

A. Through the course of any working
relationship there are times where things
arise which can impact a relationship.

Q. Can you point to any specific
conflict that you had with Dan Myers?

A. I don't know, nothing comes to the
top of my head right now.

Q. Have you ever had a conflict or
disagreement with Dan Myers concerning any of
the issues involved in this case?

A. Define conflict.

Q. Disagreement.

A. Yes.

Q. Tell me about it.

A. Whether or not to raise capital
for Drinks Americas.

Q. And what was your position and
what was his position?

A. My position was not to raise money
for the company.

Q. And Dan wanted to raise money?

A. Yes.

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Kassai

Q. Why didn't you want to raise money
for Drinks Americas?

A. I felt that it was a poorly run
company with poor management and no execution
plan.

Q. Was there a discussion about this
whether or not to raise money at Sloan
Securities?

A. Yes.

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11 Q. Who else was involved in that
12 discussion?

13 A. To the best of my knowledge, this
14 goes back numerous years, I would have to
15 assume Jim Ackerman was involved as well as
16 the other bankers who were there at the time.

17 Q. Who were the other bankers?

18 A. I don't recall.

19 Q. Was Jim Ackerman the president of
20 Sloan Securities while you were there?

21 A. Jim Ackerman is and was the CEO,
22 president of Sloan Securities, yes.

23 Q. Okay.

24 By the way, what do you do in your
25 merchant banking business today, what type of

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1 Kassai
2 transactions are you involved in?

3 A. Transactions that make money or
4 try to make money.

5 Q. How do you do that?

6 A. Look for opportunities where the
7 fundamentals and financials could hopefully
8 make money.

9 Q. What services do you provide for
10 your clients?

11 A. Many.

12 Q. Describe them.

13 A. Advisory work, M and A work.

14 Q. Do you raise money for your
15 clients from time to time?

16 A. No.

17 Q. Do you solicit investors who are
18 willing to invest in any of your clients?

19 A. No, its nonsolicited.

20 Q. Nonsolicited.

21 You do M and A work, merchant
22 banking, what else?

23 A. And I had advisory work.

24 Q. What type of advisory work?

25 A. Helping with cap tables,

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1 Kassai
2 financials, working a company through
3 difficult times or good times, helping them
4 reassess or assess potential opportunities.

5 Q. Do you have any partners in your
6 business today?

7 A. Which business?

8 Q. The merchant banking business that
9 you conduct at 444 Madison Avenue?

10 A. No.

11 Q. You work entirely on your own in
12 that office?

13 A. Yes.

14 Q. What is your educational
15 background by the way, what degrees have you
16 earned?

17 A. I have a BA and a masters.

18 Q. Where did you earn your BA?

19 A. At Ner Israel Rabbinical College.

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20 Q. Is that in Israel?
 21 A. No, it is in Maryland.
 22 Q. How do you spell that?
 23 A. N-e-r Israel. I-s, do I need to
 24 spell the rest?
 25 Q. Its a rabbinical college?

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1 Kassai
 2 A. Yes.
 3 Q. where did you get your masters?
 4 A. Johns Hopkins.
 5 Q. What was your masters in?
 6 A. Finance.
 7 Q. When did you get your masters at
 8 Johns Hopkins?
 9 A. I don't remember the exact year, I
 10 would have to refer back to my CV; it was a
 11 while ago.
 12 Q. Can you extrapolate back, did you
 13 go directly from the rabbinical college to
 14 John Hopkins?
 15 A. Yes.
 16 Q. Try to remember when you got your
 17 BA and you'll probably be able to figure out
 18 when you got your masters.
 19 Does that help you?
 20 A. From the period of '95 to '97,
 21 somewhere around there, not exactly sure.
 22 Q. That is when you got your masters?
 23 A. Correct.
 24 Q. How old are you?
 25 A. 34.

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1 Kassai
 2 Q. You think you got your masters
 3 somewhere between '95 and '97?
 4 A. Yes.
 5 Q. By the way, do you have a CV?
 6 A. Yes.
 7 Q. Do you have a copy of it with you?
 8 A. No.
 9 RQ
 10 MR. GOPSTEIN: I would call for the
 11 production of Mr. Kassai's curriculum
 12 vitae.
 13 Q. What did you do after --
 14 MS. WALSH: Have you ever asked for
 15 it before?
 16 MR. GOPSTEIN: Probably not.
 17 Q. What was your first employment
 18 after Johns Hopkins?
 19 A. Morgan Stanley.
 20 Q. What did you do at Morgan Stanley?
 21 A. I was a financial advisor.
 22 Q. What department?
 23 A. No specific department.
 24 Q. Who did you report to?
 25 A. Jim Wambles (phonetic).

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1 Kassai

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2 Q. what was his title at the firm?
 3 A. Managing director.
 4 Q. Managing director of any
 5 particular department?
 6 A. No.
 7 Q. How long were you at Morgan
 8 Stanley?
 9 A. Little over three years.
 10 Q. what did you do after that?
 11 A. Went to Spencer Trask.
 12 Q. what was Spencer Trask?
 13 A. A venture capital firm.
 14 Q. where are they located?
 15 A. Midtown Manhattan.
 16 Q. what did you do there, what type
 17 of work?
 18 A. Assessed potential companies for
 19 capital raises, helped with the companies,
 20 advised, raised capital, negotiated.
 21 Q. How long were you there?
 22 A. Little over a year.
 23 Q. what did you do after that?
 24 A. Went to work at Sunrise
 25 Securities.

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1 Kassai
 2 Q. where is that located?
 3 A. Midtown Manhattan.
 4 Q. what did you do at Sunrise
 5 Securities?
 6 A. Pretty much the same thing I did
 7 prior.
 8 Q. what department did you work in at
 9 Sunrise Securities?
 10 A. No department.
 11 Q. How long were you there?
 12 A. Two and a half years roughly.
 13 Q. Okay.
 14 After that did you rent space at
 15 444 Madison Avenue?
 16 A. Yes.
 17 Q. As a merchant banker?
 18 A. Yes.
 19 Q. On your own or did you have
 20 partners at that time?
 21 A. One of my partners at that time
 22 was Dan Myers.
 23 Q. How did you meet Dan Myers?
 24 A. In synagogue.
 25 Q. where?

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1 Kassai
 2 A. In Lawrence, New York.
 3 Q. Is that where you live?
 4 A. Yes.
 5 Q. You still live in Lawrence?
 6 A. Correct.
 7 Q. Does Dan Myers live in Lawrence?
 8 A. To the best of my knowledge.
 9 Q. Do you still attend the same
 10 synagogue?

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11 A. Sometimes.
12 Q. Do you see him there on occasion?
13 A. Sometimes.
14 Q. Okay.
15 When you see him there do you
16 greet each other?
17 A. Yes.
18 Q. When was the last time that you
19 saw Dan Myers anywhere?
20 A. Two evenings ago.
21 Q. Where?
22 A. A mutual individual who lives in
23 the Five Towns was making a Hanukkah party and
24 I attended it. I was invited and I assume
25 that Mr. Myers was invited as well.

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1 Kassai
2 Q. Did you have a chance to talk at
3 the Hanukkah party?
4 A. No.
5 Q. You didn't say a word to Dan?
6 A. No.
7 Q. Did you acknowledge each other?
8 A. No.
9 Q. Is there a reason why you didn't
10 talk?
11 A. I wasn't in the mood.
12 Q. Okay.
13 When was the last time that you
14 met or spoke to Dan Myers before the Hanukkah
15 party?
16 A. I don't recall.
17 It could have been the Saturday
18 before there was another party that we clearly
19 were both invited to or I shouldn't say that,
20 let me, I was invited, I have to assume he was
21 invited as well.
22 Q. Okay.
23 So you actually see Dan Myers at
24 social functions fairly regularly either at
25 social functions or at the synagogue?

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1 Kassai
2 A. Yes.
3 Q. And with respect to the continuing
4 old business that you have with Dan Myers,
5 when is the last time that you spoke to Dan
6 about any of that old business that's still
7 alive?
8 A. Probably about a week or two ago.
9 Q. What did you talk about?
10 A. Deals that we had worked on in the
11 past.
12 Q. Which deals?
13 A. Format Health, Basic Care, Sky
14 Frames, Polestar (phonetic).
15 Q. Are those deals that you worked
16 together with Dan at Sloan Securities or --
17 A. Yes.
18 Q. All of them were at Sloan?
19 A. Yes.

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20 Q. Okay.
21 Are you still entitled to
22 compensation or what is --
23 A. Yes.
24 Q. On all four of those deals?
25 A. Yes.

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1 Kassai
2 Q. Are they still being worked on or
3 have the deals been concluded and you're just
4 discussing the compensation?
5 A. Both.
6 Q. Okay.
7 Do you know Dan Myers generally in
8 your opinion to be an honest person?
9 MS. WALSH: I am going to object.
10 MR. GOPSTEIN: Okay.
11 Q. Yes or no?
12 A. To the best of my knowledge, yes,
13 an honest person.
14 Q. Have you ever known Dan Myers to
15 say or do anything dishonest?
16 A. Are you asking if he's ever lied?
17 Q. That you know of.
18 A. Yes.
19 Q. When has he lied that you know of?
20 MR. GOPSTEIN: Let the record
21 reflect that the witness is thinking.
22 A. I would say with regard to certain
23 transactions there were times when he was not
24 fully telling the truth.
25 Q. Which transactions?

00037

1 Kassai
2 A. Specifically to this matter at
3 hand, Drinks Americas.
4 Q. Who did he lie to?
5 A. To the best of my knowledge, he
6 lied to me and Sloan Securities.
7 Q. What did he lie about and when?
8 A. I do not know exact dates,
9 specifically with regard to monies earmarked
10 for the company.
11 Q. When you say the company, you mean
12 Drinks Americas?
13 A. Drinks Americas, correct.
14 Q. What did he say to you or to Sloan
15 that was untruthful?
16 A. As the money was coming in
17 supposedly going to escrow for Drinks
18 Americas, it seems that was not the case.
19 Q. Where was the money going?
20 A. I do not know.
21 Q. So money was coming in to Sloan
22 Securities?
23 A. No, it doesn't come into Sloan.
24 Q. Where did it come?
25 A. Supposedly it went to the escrow.

00038

1 Kassai

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2 Q. Sloan Securities had an escrow
3 account at Signature Bank?

4 MS. WALSH: Is there a time frame
5 here?

6 Q. What time frame are we talking
7 about?

8 A. I assume we are talking about from
9 when the investment banking, original
10 investment banking, the first investment
11 banking agreement dated December '04 until the
12 period of time after let's call it October,
13 November '06.

14 Q. Okay.

15 And money was coming in to Sloan
16 Securities' escrow account at Signature Bank;
17 is that correct?

18 A. To the best of my knowledge, yes.

19 Q. That money was coming in from
20 investors who thought they were investing or
21 going to invest in Drinks Americas?

22 MS. WALSH: Object to the form as
23 to what the investors thought.

24 Q. What was the money that was coming
25 in to the escrow account to be used for?

00039

1 Kassai

2 MS. WALSH: According to who? I
3 have to object, I'm sorry, it's vague.

4 Q. What is your understanding of why
5 monies were coming in to Sloan Securities'
6 escrow account at Signature Bank?

7 A. I believe it was for a further
8 deposit to be distributed among Sloan and
9 Drinks Americas.

10 Q. Who was the money coming from?

11 A. Various investors.

12 Q. Was this the bridge loan or was
13 this investors in equity?

14 A. It was convertible equity.

15 Q. Are you saying there were some
16 people who were willing to lend money to
17 Drinks Americas that were depositing money in
18 the Sloan Securities escrow account?

19 A. What I'm saying is it was
20 convertible equity.

21 Q. I'm past that already.

22 Whoever these people were, were
23 they intending to invest or to lend money to
24 Drinks Americas?

25 MS. WALSH: I'm going to --

00040

1 Kassai

2 A. Invest.

3 Q. Excuse me?

4 A. Invest.

5 Q. They were intending to invest
6 monies in Drinks Americas?

7 A. Yes.

8 Q. For that purpose they wrote checks
9 which were deposited in the Sloan Securities
10 escrow account at Signature Bank, correct?

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11 A. I believe so.
12 Q. Are you saying the money that was
13 earmarked to go to Drinks Americas was
14 diverted for some other purpose?
15 A. I'm saying that was what I was led
16 to believe, yes.
17 Q. Do you know that that happened?
18 MS. WALSH: I object to the form
19 and to the time frame, your questions are
20 really broad.
21 MR. GOPSTEIN: He gave me a time
22 frame.
23 MS. WALSH: Okay.
24 A. The question again, please?
25 Q. How do you know that monies that

00041

1 Kassai
2 were earmarked for investment in Drinks
3 Americas were diverted for some other purpose,
4 how do you know that?
5 A. I was told.
6 Q. Who told you?
7 A. Jim Ackerman.
8 Q. When did Jim Ackerman tell you
9 that?
10 A. Most likely in August, August '07.
11 Q. August of 2007?
12 A. Yes.
13 MR. GOPSTEIN: I have got to take a
14 five-minute break.
15 Off the record.
16 (Whereupon, an off-the-record
17 discussion was held.)
18 (Time noted: 3:12 p.m.)
19 (Time noted: 3:18 p.m.)
20 Q. Was August 2007 the first time
21 that you learned that money had been diverted
22 out of Sloan Securities' escrow account that
23 was supposed to go to Drinks Americas?
24 A. I don't understand your question.
25 Q. You said --

00042

1 Kassai
2 A. How is money, I don't know how
3 money can be diverted out of an escrow
4 account.
5 Q. Didn't you say money was supposed
6 to go to Drinks Americas but it was diverted
7 elsewhere?
8 A. Correct, but I don't know if money
9 can be diverted out of an escrow account. I'm
10 not, I don't know exactly when the money was
11 diverted or how much money was diverted.
12 Q. Okay.
13 A. And yes, that was the first time I
14 learned of that.
15 Q. Is it accurate to say that
16 sometime in August 2007 you learned for the
17 first time that investor money that was
18 deposited in a Sloan Securities escrow account
19 earmarked for Drinks Americas was actually

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used for some other purpose?

A. Yes, that was the first time.

Q. What exactly did Jim Ackerman tell you when you learned about this for the first time in August 2007?

A. I don't exactly remember verbatim

00043

Kassai
word for word what he said.

Q. In sum and substance, what did he say?

A. That Dan Myers had done things while collectively all of us were working under Sloan that was unbeknownst to myself and him as well.

Q. Are you saying that Jim Ackerman said that Dan Myers did this all on his own?

A. Yes, I am.

Q. Did Dan Myers have signature authority, sole signature authority at Signature Bank? No pun intended.

A. I don't know.

Q. Were you a signatory on any of the Sloan Securities bank accounts at Signature Bank?

A. No.

Q. Was Jim Ackerman?

A. I said I don't know.

Q. Were you ever involved in any banking transactions transferring funds or depositing funds for investment bank transactions at Sloan Securities?

00044

Kassai
MS. WALSH: That's pretty compound. Be more specific, please.

Q. Did you interact with Signature Bank on behalf of Sloan Securities at any time?

A. No.

Q. Who was the bank officer at Signature Bank who handled Sloan Securities' accounts?

A. I do not know.

Q. Have you ever communicated with anyone at Signature Bank concerning any accounts of Sloan Securities?

A. No.

Q. What else did Jim Ackerman tell you about what Dan Myers had supposedly done? A. That's really the only thing that comes to mind right now.

Q. Did you go and talk to Dan Myers about this after Jim Ackerman told you what Dan had done?

A. Immediately right after?

Q. At any time.

00045

1

Kassai

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2 A. Yes.
3 Q. When was the first time you talked
4 about this subject to Dan Myers or with Dan
5 Myers?
6 A. Most likely subsequent to that
7 conversation.
8 Q. What did you talk about?
9 A. What exactly transcribed (sic) or
10 happened at that juncture.
11 Q. What did Dan Myers tell you about
12 what had happened?
13 A. He wasn't very specific. He had
14 just said that there were things that were
15 done that he was sorry for, and he had worked
16 with Drinks Americas to rectify the situation
17 and he's dealing with it.
18 Q. Did you ask him specifically what
19 he had done?
20 A. I had asked him specifically what
21 he had done, yes.
22 Q. What did he say?
23 A. He said it was really irrelevant.
24 Q. All right.
25 were you in involved in

□
00046

1 Kassai
2 communicating with investors or potential
3 investors in the course of raising money for
4 Drinks Americas?
5 A. Very seldomly.
6 Q. Who was?
7 A. Dan Myers.
8 Q. Who else?
9 A. Dan Myers.
10 Q. Jim Ackerman didn't talk to any of
11 the investors?
12 A. Not to my knowledge. He may or
13 may have not, I have no idea, you would have
14 to ask him.
15 Q. What was your role in connection
16 with the December 2004 investment banking
17 agreement?
18 MS. WALSH: I object to the form of
19 the question.
20 MR. GOPSTEIN: You can object.
21 Q. What was your role?
22 A. I had no role, I was an employee
23 of Sloan Securities.
24 Q. Did you work on the transaction?
25 A. Define work.

□
00047

1 Kassai
2 Q. Did you perform any service in
3 connection with the December 2004 investment
4 banking agreement?
5 A. Yes, I gave Dan Myers two of my
6 contacts.
7 Q. What else did you do?
8 A. That was it.
9 Q. Did you communicate with Drinks
10 Americas?

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11 A. Unless they were in the office,
12 no, to the best of my knowledge.

13 Q. So are you saying that your sole
14 involvement in its entirety with respect to
15 the December 2004 investment banking agreement
16 between Sloan and Drinks was simply referring
17 two contacts to Dan Myers and that's all you
18 did?

19 A. You can call it simply, but that
20 is, they were the two largest investors in
21 that equity raise.

22 Q. What were the names of the two
23 investors or the two contacts that you gave to
24 Dan Myers?

25 A. Cornell Capital and Triage.

00048

1 Kassai

2 Q. Did you deal with Cornell and
3 Triage in connection with their proposed
4 investment in Drinks Americas?

5 A. No.

6 Q. Who did?

7 A. I have to assume Dan Myers.

8 Q. Do you know which investor or
9 potential investors' funds were diverted?

10 A. No idea.

11 Q. Do you know how much money was
12 diverted out of the Sloan escrow account?

13 A. No idea.

14 Q. Do you know for what period of
15 time it was diverted?

16 A. No idea.

17 Q. Do you know what happened to the
18 money?

19 A. No idea.

20 Q. Did the money ultimately go to
21 Drinks Americas?

22 A. To the best of my knowledge, yes.

23 Q. What money --

24 A. I assume that.

25 Q. What money, if you know, was

00049

1 Kassai

2 originally diverted but then somehow made its
3 way to Drinks Americas?

4 A. I already stated that I didn't
5 know any money was diverted until almost two
6 years later.

7 Q. I understand that, I'm asking you
8 now for your understanding today based upon
9 what you learned so far, what happened to the
10 monies that were diverted or used for some
11 other purpose, what happened to that money?

12 A. I have to assume it made its way
13 to Drinks Americas as Drinks Americas only
14 paid us the cash portion of the commission for
15 the 1.35 million.

16 Q. But that's just an assumption,
17 you're just guessing, you don't know that to
18 be the case?

19 A. I don't know that what's the case?

12-12-07 phillip kassai v drinks america holdings - kassai.txt

20 Q. That the money that was originally
21 diverted was then somehow given to Drinks
22 Americas, you don't know that for a fact?

23 MS. WALSH: Do you know how much
24 money? If you have a document or
25 something that you can identify it would

00050

1 Kassai
2 make the questions less vague and less
3 objectionable.

4 MR. GOPSTEIN: We are getting that
5 information from Signature Bank, I don't
6 know the exact amount.

7 A. I don't know the amount either.

8 Q. What I'm trying to get at is how
9 do you know or are you just guessing or
10 assuming that the money actually eventually
11 went to Drinks Americas?

12 MS. WALSH: What the money, I
13 object.

14 Q. The money that was diverted?

15 A. I told you my assumption is that
16 the money made its way to or back to Drinks
17 Americas because Drinks Americas paid
18 commissions on those dollars.

19 Q. Did anyone ever tell you that the
20 1,350,000 that was raised had nothing to do
21 with the money that was diverted but that the
22 money that was diverted was actually other
23 monies.

24 Did you ever hear of that?

25 A. No.

00051

1 Kassai

2 Q. Okay.

3 Did you ever hear anyone, Jim
4 Ackerman or Dan Myers or anyone else tell you
5 that the money that was diverted was actually
6 returned to the investors or potential
7 investors and never went to Drinks Americas?

8 A. I don't know.

9 I mean it might have been that Dan
10 could have been made mention to that at the
11 time that when I confronted him after,
12 subsequent to the Jim Ackerman phone call, I
13 don't recall.

14 Q. Okay.

15 A. It was irrelevant to me at that
16 point.

17 Q. While you were at Sloan and this
18 December 24th investment banking agreement was
19 in place, did you on occasion keep track of
20 how the deal was progressing?

21 A. Not really.

22 Q. Why not?

23 A. At the firm there were many
24 transactions going on simultaneously, this
25 wasn't one I was really working on.

00052

1 Kassai

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2 Q. Didn't you stand to gain some sort
3 of compensation if the deal successfully
4 concluded?

5 A. Yes.

6 Q. But you just weren't interested or
7 you --

8 A. That's not what I said.

9 Q. You were too busy?

10 A. Too busy.

11 Q. Did you know, for instance, what
12 investors were investing at any particular
13 point in time?

14 A. I stated the only two investors
15 that I knew or cared about were the ones that
16 I mentioned previously.

17 Q. Okay.

18 Do you know what Dan Myers
19 supposedly used the money for that was
20 diverted?

21 A. No idea.

22 Q. When Mr. Myers said he was working
23 it out with the company, do you know how he
24 was working it out?

25 A. No idea.

00053

Kassai

1 Q. Do you know today what arrangement
2 or work out was --

3 A. No.

4 Q. -- accomplished?

5 A. No.

6 Q. Do you know when Jim Ackerman
7 first became aware of the fact that money had
8 been diverted away from Drinks Americas that
9 was supposed to go to Drinks Americas?

10 A. No.

11 MS. WALSH: Objection. You're
12 asking him what Jim Ackerman knew and
13 when?

14 MR. GOPSTEIN: I'm asking if he
15 knows.

16 A. No idea.

17 Q. When Jim first told you about
18 this, did he tell you when he first found out
19 about it?

20 A. Not to my recollection, no.

21 Q. Did you ever ask him, "Jim, when
22 did you find out about this," or "How long
23 have you known about this?"

24 A. Not to my recollection, no.

00054

Kassai

1 Q. Have you ever had a conversation
2 with Jim Ackerman as to why he didn't tell you
3 this before August 2007?

4 A. No.

5 Q. Did you consider this to be a
6 pretty serious matter when you found out about
7 it?

8 MS. WALSH: Objection.

9 MR. GOPSTEIN: I'll rephrase it.

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11 Q. Is it your understanding that this
12 would be --

13 MS. WALSH: This is what I'm
14 objecting to, your term this.

15 MR. GOPSTEIN: Okay, so I'll
16 rephrase, even though I'm not finished
17 with the question.

18 Q. Is it your understanding that the
19 alleged diversion of money away from a client
20 to be used by one of the principals of the
21 firm was a serious regulatory matter when you
22 found out about it?

23 MS. WALSH: Objection. You can
24 answer.

25 A. You're making a lot of

00055

1 Kassai
2 speculations in there, I don't know how to
3 answer it.

4 Q. Did you think about it? What came
5 to your mind when you found out that Dan Myers
6 had allegedly used money for some other
7 purpose that was supposed to go to Drinks
8 Americas?

9 A. You're asking me what I was
10 thinking?

11 Q. Yes.

12 A. That that was a bad thing.

13 Q. Okay, that's what I'm trying to
14 get at.

15 Bad in what way, a regulatory
16 standpoint?

17 A. Yes, regulatory.

18 Q. Did you think it was a criminal
19 offense?

20 A. I had no idea, I didn't know the
21 facts so I couldn't comment.

22 Q. Okay.

23 As you sit here today, do you have
24 any reason to believe that Jim Ackerman knew
25 about this diversion of funds long before

00056

1 Kassai
2 August 2007?

3 A. I have no idea.

4 Q. As you sit here today, do you have
5 any understanding or any information
6 whatsoever that would assist us in determining
7 when Jim Ackerman first found out about what
8 had taken place?

9 A. No idea.

10 Q. Okay.

11 You brought a claim against Drinks
12 Americas alleging an entitlement to 300,000
13 warrants to purchase stock of Drinks Americas,
14 correct?

15 A. Me personally?

16 Q. Yes.

17 MS. WALSH: You want to show him
18 the complaint like I showed Mr. Kenny?

19 MR. GOPSTEIN: Like you didn't show

12-12-07 phillip kassai v drinks america holdings - kassai.txt

20 Mr. Kenny, but I'll be more than happy to
21 do that.
22 Do you have a marked copy of the
23 complaint?
24 MS. WALSH: I don't know if I did
25 put it in or not.

00057

1 Kassai
2 MR. GOPSTEIN: I'm not going to
3 mark this only because its a faxed copy.
4 Let me ask you to take a look at
5 this.
6 MS. WALSH: You can substitute it
7 if you want.
8 MR. GOPSTEIN: If you have a copy.
9 MS. WALSH: I just don't want to
10 interrupt the deposition, we can
11 substitute it if that's okay with you.
12 MR. GOPSTEIN: Okay.
13 Q. You can take a look at your entire
14 complaint but I want you to particularly look
15 at the relief on page six at the end, and then
16 I'll ask you some questions.
17 A. What was your question?
18 Q. Let me, can I have it for a
19 second.
20 what exactly are you suing for in
21 the complaint that you filed against Drinks
22 Americas?
23 MS. WALSH: Objection, are you
24 talking damages, are you talking behavior
25 that he's suing for, its vague.

00058

1 Kassai
2 Q. what relief are you asking for?
3 MS. WALSH: Do you know what that
4 means?
5 Q. If you don't know what it is then
6 tell me.
7 A. I'm not sure, I think its in the
8 document so I'm not really sure what you're
9 asking.
10 Q. I'm asking for your understanding.
11 what are you asking to get from
12 Drinks Americas?
13 A. The compensation that is due to me
14 through the various warrants and investment
15 banking agreements that were signed with
16 Drinks Americas.
17 Q. what do you think is due to you?
18 A. The percentages as split within
19 Sloan of the 300,000 warrants, the percentages
20 as accorded with Sloan of the warrants that
21 are due from the \$1.35 million equity raise
22 for Drinks.
23 Q. Isn't that the same thing?
24 A. There are various documents. So
25 I'm just making sure that we are --

00059

1 Kassai

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2 Q. I'm asking what you want from
3 Drinks Americas. If you were to win this
4 lawsuit, what do you think you should get?

5 A. Its roughly 110,000 warrants if I
6 remember correctly all added in that are --

7 Q. Do you have an exact number of
8 what you think you're entitled to?

9 MS. WALSH: Are you talking dollars
10 or warrants?

11 MR. GOPSTEIN: Warrants.

12 Q. You're not suing for dollars, are
13 you?

14 A. Both.

15 Q. What dollars do you think you're
16 entitled to?

17 MS. WALSH: There is a paragraph in
18 the complaint that will be in evidence,
19 whatever other further relief so that's a
20 catchall paragraph.

21 Q. Other than the catchall, what are
22 you asking to get from Drinks Americas?

23 A. Warrants, interest and costs.

24 Q. Okay.

25 A. That would cover it.

00060

1 Kassai

2 Q. How many warrants do you claim
3 Drinks Americas owes you, you, Phillip Kassai?

4 A. I need to do the, that's a
5 formulation and some math that needs to be
6 done. I don't have the exact number off the
7 top of my head.

8 Q. Would it take you a short time to
9 be able to figure it out or are we going to
10 have to take a long break to do that?

11 A. It could take 10, 15 minutes.

12 Q. That's actually longer than I
13 wanted to at this point.

14 Do you have any sort of
15 approximation in your head of what you think
16 you're entitled to?

17 A. Yes, the damages should be
18 somewhere about \$300,000 when if you include
19 the assignment and sale of the warrants.

20 Q. How many warrants do you think
21 you're entitled to, if you can estimate?

22 MS. WALSH: Objection, this is
23 asked and answered.

24 MR. GOPSTEIN: No, its not asked
25 and answered. He said he would need 15

00061

1 Kassai

2 minutes to give me an exact number.

3 Q. I'm asking without taking a
4 15-minute break since you have apparently
5 never done it before, do you have an
6 approximate number?

7 A. 125,000 warrants.

8 Q. You think you're entitled to
9 approximately 125,000 warrants?

10 A. Yes.

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11 Q. And what percentage --
12 MS. WALSH: Can we go off the
13 record before you ask another question,
14 can we go off the record a second.
15 MR. GOPSTEIN: Yes.
16 MS. WALSH: Off the record.
17 (Whereupon, an off-the-record
18 discussion was held.)
19 (Time noted: 3:45 p.m.)
20 (Time noted: 3:55 p.m.)
21 Q. Mr. Kassai, before today have you
22 ever sat down and calculated the exact numbers
23 of warrants that you believe Drinks Americas
24 owes you?
25 MS. WALSH: In the universe, not

00062

1 Kassai
2 just in this case? Is that your
3 question, otherwise I object.
4 Q. Is there any allegation that
5 Drinks Americas owes you warrants outside of
6 this lawsuit? Is there something else I don't
7 know about?
8 MS. WALSH: You can answer the
9 question. I may object but you have to
10 answer.
11 A. I went through this exercise with
12 my attorneys when the case was brought.
13 MS. WALSH: Don't talk about
14 conversations with your attorneys.
15 Q. Okay.
16 So --
17 MS. WALSH: Its privileged.
18 Q. Are you saying there was a time
19 that you sat down and calculated the number of
20 warrants that you believe that you're entitled
21 to?
22 A. Yes.
23 Q. What is that number to the best of
24 your recollection?
25 A. I think you asked me that question

00063

1 Kassai
2 and I answered it already.
3 Q. What is the number of warrants
4 that you believe you're entitled to to the
5 best of your recollection and understanding as
6 you sit here today?
7 A. I said roughly 125,000 warrants.
8 Q. Okay.
9 You would need you said about
10 15 minutes or so to come up with an exact
11 number, but you think that number is close?
12 A. Correct.
13 Q. What percentage of the total
14 warrants that you believe are owed to Sloan
15 Securities is your percentage?
16 A. Well, there are two warrants in
17 question here.
18 Q. Let's --
19 A. You say Sloan Securities, are you

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referring also to the warrants that were
issued into Sloan Equity Partners.

Q. Yes.

A. My belief is a rough estimate.

As I said 125,000 warrants which
would represent roughly 40 percent of the

00064

Kassai
outstanding warrants due.

Q. Okay.

So the refuse number of 125,000
warrants includes all warrants that would be
due to Sloan Securities or Sloan Equity
Partners, correct?

A. Due to me?

Q. Yes.

A. Yes.

In other words, you're not saying
40 percent of 125,000?

Q. No.

A. Okay, I'm just a little confused
with --

Q. Okay.

Is your testimony that you are
entitled to 40 percent of whatever number of
warrants are due to Sloan Securities or Sloan
Equity Partners?

A. Yes.

Q. Okay.

And your understanding is that
40 percent is roughly equivalent to 125,000
warrants?

00065

Kassai

A. Yes.

Q. How do you calculate those
warrants if you were going to calculate them,
how would you do it?

A. There are several banking
agreements as well as a warrant agreement
issued by Drinks Americas to Sloan or Sloan
Equity Partners or its affiliates. And the
breakout within Sloan/Sloan Equity Partners
calls for my 40 percent as my ownership.

Q. Okay, let's break that down.

And first of all, what is the
relationship of Sloan Equity Partners to Sloan
Securities?

A. It was a special purpose vehicle
or LLC specifically created from my
understanding with this transaction so that
the warrants could be issued to that LLC.

Q. Sloan Equity Partners was created
specifically for the Drinks Americas deal?

A. Yes.

Q. Who are the members of Sloan
Equity Partners?

A. To my knowledge, Jim Ackerman, Dan

00066

1

Kassai

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Myers, Phillip Kassai.

Q. Has that always been the composition of Sloan Equity Partners?

A. To my knowledge.

Q. What is the respective ownership of the three members?

A. To my knowledge it is 20 percent Jim Ackerman, 40 percent Dan Myers, 40 percent Phillip Kassai.

Q. And is it your understanding that that is the actual ownership today?

A. I'm not sure what anyone else's of the members ownership is, I'm speaking only on what I know as far as my ownership.

Q. You believe your ownership today is 40 percent of Sloan Equity Partners?

MS. WALSH: You're talking about today? Today December 12th, Sloan Equity Partners.

A. Yes.

Q. With respect to Sloan Securities Corp you indicated that Jim Ackerman was the president and CEO, correct?

A. Yes.

00067

Kassai

Q. What title did you hold at Sloan Securities in December 2004?

A. Managing director, cohead of investment banking.

Q. What title did Dan Myers hold?

A. To my knowledge, the same title.

Q. Who were the other senior managing directors, if any, in December 2004?

A. I'm not sure.

Q. Were you an officer of the corporation?

A. No.

Q. You were not a vice president, secretary?

MS. WALSH: Of which corporation?

Q. Sloan Securities.

MS. WALSH: Sorry.

A. You're referring to Sloan Securities?

Q. Yes.

A. The answer is no and no.

Q. Were you ever a shareholder of Sloan Securities?

A. No.

00068

Kassai

Q. Was Dan Myers to your knowledge ever an officer or shareholder of Sloan Securities?

A. Do not know.

Q. By the way, what licenses securities licenses do you currently hold?

A. 7, 63, 65, 31.

Q. Did you hold those licenses in December 2004?

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11 A. Yes.
12 Pardon me, when you say I held
13 them, rephrase the question, I didn't
14 physically hold them, they were held at Sloan
15 Securities.
16 Q. well, you were registered at Sloan
17 Securities, correct?
18 A. That's a different question,
19 right.
20 Q. But the licenses were yours?
21 A. Yes, but I don't hold them, they
22 are held at Sloan Securities.
23 Q. well, we are just toying with
24 semantics here.
25 MS. WALSH: There is a business

00069

1 Kassai
2 significance but in general, if that's
3 what your question is.
4 Q. what licenses did you earn in
5 December or as of December 2004?
6 A. The ones that I previously
7 mentioned.
8 Q. Okay.
9 MR. GOPSTEIN: Mark the complaint
10 as Defendant's A, for identification.
11 (Defendant's Exhibit A, complaint,
12 marked for identification, as of this
13 date.)
14 Q. who was the director of compliance
15 at Sloan Securities while you worked there?
16 A. I don't know.
17 My belief was that it was Ken
18 Ottensdorf (phonetic).
19 Q. Did the firm file a form U-5 when
20 you left Sloan Securities?
21 A. I always get confused between U-4
22 and U-5, just tell me how that again.
23 Q. The U-4 is the uniform
24 registration statement when you first join the
25 firm.

00070

1 Kassai
2 A. Okay.
3 Q. And the U-5 is the document that
4 gets filed when you leave.
5 A. Yes, they filed a U-5.
6 Q. Do you know what reason was given
7 for the termination of the employment?
8 A. Resignation, my resignation from
9 Sloan.
10 Is that what you're referring to?
11 Q. Yes.
12 Does the U-5 say that you
13 voluntarily resigned?
14 A. Yes.
15 Q. what is your relationship today
16 with Jim Ackerman?
17 A. we still have various investments
18 together so that's the extent of my
19 relationship with him.

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20 Q. You no longer work together?
21 A. Do not work together.
22 Q. You don't have any pending deals
23 together that haven't already closed?
24 A. No, there are deals that Sloan had
25 worked on while I was there that are still

00071

1 Kassai
2 potential deals that in the event they are
3 funded or some sort of commission however its
4 structured comes in, I'm entitled to some of
5 that compensation.
6 Q. Did you have an employment
7 agreement at Sloan Securities?
8 A. No.
9 Q. What's the basis of your
10 continuing entitlement on some of those deals?
11 A. There is a written agreement that
12 was executed between myself and Jim Ackerman
13 explicitly stating that any of the deals that
14 are currently open while I was still employed
15 at Sloan Securities I'm entitled to.
16 Q. Is that a document that you signed
17 when you first joined the firm or was that
18 when you left?
19 A. It was signed when I left.
20 Q. Okay.
21 A. When I was leaving.
22 RQ
23 MR. GOPSTEIN: Let me call for the
24 production of that document.
25 Q. Do you know if the document has a

00072

1 Kassai
2 title?
3 A. No idea.
4 Q. Do you have a copy of it?
5 A. Yes, I do.
6 Q. All right.
7 RQ
8 MR. GOPSTEIN: I call for the
9 production.
10 Q. Was there any other document
11 signed while you were at Sloan Securities that
12 talks about your compensation or the terms of
13 your employment?
14 A. None at Sloan Securities.
15 Q. At Sloan Securities?
16 A. No.
17 Q. Was there anything that you signed
18 with Sloan Equity Partners?
19 A. There is an operating agreement, I
20 must assume that there is many operating
21 agreements I signed or were a part of so I
22 can't recall if I signed to that or not, I'm
23 assuming that I did.
24 Q. The operating agreement is where
25 it states that its a 40/40/20 split?

00073

1 Kassai

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2 A. Correct.
3 RQ
4 MR. GOPSTEIN: I call for the
5 production of the Sloan Equity Partners
6 operating agreement.
7 MS. WALSH: Can I just have one
8 second?
9 MR. GOPSTEIN: Yes.
10 MS. WALSH: Thanks.
11 Q. Okay.
12 Let's go back to the analysis of
13 the basis of why you think you're entitled to
14 approximately 125,000 warrants. You said that
15 that's reflected in a number of documents,
16 let's go through that.
17 First of all, is your entitlement
18 to a certain number of warrants in your
19 opinion included in the December 27th, 2004
20 investment banking agreement?
21 A. Am I entitled to warrants as a
22 result of that?
23 Q. Yes.
24 A. Yes.
25 Q. Okay.

00074

1 Kassai
2 Is it your understanding that
3 there is language in the agreement that
4 results in the entitlement of a certain number
5 of warrants that you're claiming in this
6 lawsuit?
7 A. Yes.
8 Q. Could you point to where in the
9 agreement?
10 MR. GOPSTEIN: And let the record
11 reflect --
12 MS. WALSH: I object to the same
13 objection that you had with your
14 witnesses with respect to a legal
15 interpretation of language in the
16 document.
17 MR. GOPSTEIN: Right.
18 MS. WALSH: If you want an
19 opinion --
20 MR. GOPSTEIN: You can object all
21 you want, I'm going to ask questions.
22 Let me first show the witness the
23 document, let me ask the questions and we
24 will see if you still object.
25 Let the record reflect that I'm

00075

1 Kassai
2 showing the witness what has been
3 previously marked as Plaintiff's
4 Exhibit 4, it is the December 27th, 2004
5 investment banking agreement between
6 Drinks Americas and Sloan Securities
7 Corp.
8 Q. Mr. Kassai, have you ever seen
9 that document before?
10 A. Yes.

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11 Q. Did you have any role in the
12 negotiation of that document?

13 A. No.

14 Q. When is the first time that you
15 saw the document?

16 A. Most likely on its execution.

17 Q. Okay.

18 who negotiated that document on
19 behalf of Sloan?

20 A. To the best of my knowledge, Jim
21 Ackerman and Dan Myers.

22 Q. who did they negotiate with?

23 A. To the best of my knowledge,
24 Patrick Kenny and Bruce Klein.

25 Q. Okay.

00076

1 Kassai

2 Is it your understanding that
3 Sloan Securities was entitled to receive a
4 certain number of warrants pursuant to that
5 investment banking agreement?

6 A. Yes.

7 Q. Okay.

8 Do you believe that Sloan
9 Securities actually performed services
10 pursuant to that agreement that entitled it to
11 receive warrants?

12 A. Yes.

13 Q. What services did it perform that
14 would result in its entitlement to any
15 warrants?

16 A. The raising of equity for Drinks
17 Americas.

18 Q. Is it your testimony and your
19 understanding that Sloan Securities raised
20 equity for Drinks Americas?

21 A. Convertible equity, yes.

22 Q. They in fact raised debt in a
23 series of bridge loans, did they not?

24 A. No, they did not.

25 Q. There was no debt that was raised

00077

1 Kassai

2 whatsoever.

3 Is that your testimony?

4 A. I said it was convertible.

5 Q. Convertible to equity?

6 A. Correct.

7 Q. Debt that was convertible to
8 equity, correct?

9 A. Define debt.

10 Q. An obligation to pay someone
11 money.

12 MS. WALSH: Are you asking for the
13 legal or the investment bankers
14 definition?

15 MR. GOPSTEIN: I don't know, he
16 asked me to define it, that's what I
17 mean.

18 MS. WALSH: Okay.

19 I object to asking for a legal

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conclusion.

MR. GOPSTEIN: I didn't ask, he
asked me.

Q. All right.

You don't know what debt means and
you're an investment banker?

00078

Kassai

A. I do, it's a very broad language,
debt.

Q. What do you think debt means?

A. Debt is any instrument where
someone borrows or is in need of borrowing
money from someone else.

Q. Isn't it true that Sloan
Securities arranged for Drinks Americas to
borrow money from a variety of investors
pursuant to the December 2004 investment
banking agreement?

A. Yes.

Q. Isn't it true that Drinks Americas
borrowed \$1,350,000 from various investors
with the assistance of Sloan Securities Corp?

A. As I said, Sloan Securities raised
money for Drinks Americas.

Q. We know that.

A. Okay.

Q. Isn't it true that Drinks Americas
borrowed \$1,350,000 from a variety of people
arranged through Sloan Securities?

A. Drinks Americas took \$1.35 million
in to the company as a result of Sloan

00079

Kassai

Securities' efforts, yes.

Q. Fine.

Did they take the money in as a
debt or did they take it in as an investment
of equity?

A. There was a convertible instrument
which is viewed in the banking industry as a
form of equity.

Q. You're saying in the banking
industry a promissory note --

A. Convertible promissory note.

Q. -- that was convertible at the
option of the company is considered equity in
the industry?

MS. WALSH: Let him finish the
question.

Q. Is that what you're saying?

A. That's not what I'm saying.

Q. What are you saying?

A. I simply said that the company
took in \$1.35 million as a result of Sloan
Securities' efforts to raise capital for the
company.

Q. When they took the money in,

00080

Kassai

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Drinks Americas issued promissory notes,
correct?

A. Convertible into equity.

Q. Did they issue promissory notes,
yes or no?

A. Promissory notes with the option
to convert into equity, yes.

Q. And subsequently down the road
some of the noteholders converted their debt
instruments to equity; isn't that what
happened?

A. Again, you are putting the word
debt in there. They converted their note into
equity, yes, they converted their note into
equity.

Q. Isn't a promissory note a debt?

A. Depends how its structured.

Q. It depends how its structured?

A. Yes.

Q. So you think that a promissory
note might not be a debt even though it says I
owe a certain amount of money?

A. That's not what I said.

Q. Well, in what instance, give me an

00081

Kassai

example, a single example that you can think
of where a promissory note from one entity to
another entity is not a debt as you understand
it having a masters in finance from Johns
Hopkins and been through the securities
industry for many years.

How is that not debt?

MS. WALSH: Your question was give
an example?

Q. Give me one example, yes.

A. Of?

Q. How a promissory note could not be
debt.

A. It is a type of, a form of debt.

Q. Okay.

A. It is not straight debt.

Q. And the promissory notes that were
issued by Drinks Americas in this case were
notes that were subsequently converted to
equity, correct?

A. Its not subsequently converted,
the option on the onset from the money taken
in by Drinks Americas called for the ability
for the investor to allow for a conversion.

00082

Kassai

Q. And that conversion took place
down the road, correct?

A. It could have taken place at any
point in time.

Q. I asked you when it actually took
place, not that it could have.

MS. WALSH: Objection, there are a
lot of different notes here, there a lot
of different investors; you know that.

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11 Q. Can you point to any investor that
12 immediately exercised their supposed option to
13 convert to equity upon receiving their notes?

14 A. No.

15 MS. WALSH: You would have those
16 records, I object.

17 MR. GOPSTEIN: I'm asking him if he
18 knows.

19 MS. WALSH: If you have those
20 documents, you should produce them.

21 MR. GOPSTEIN: We did already.

22 MS. WALSH: You produced those
23 documents.

24 Can you show him the documents?

25 MR. GOPSTEIN: I'm asking if he

00083

1 Kassai

2 knows. You can have your objection and
3 that's fine.

4 Q. Are you aware of any noteholder
5 that immediately converted their supposed
6 option upon receipt of their note?

7 MS. WALSH: Objection.

8 A. I don't know all the investors.

9 Q. Do you know of any that did that?

10 A. I don't know.

11 Q. Do you know whether any of them
12 could have done that?

13 A. Upon the date of ability to
14 convert?

15 Q. Yes.

16 A. I believe there were investors who
17 did.

18 Q. Convert later on, correct?

19 A. At the time when they were able,
20 the first available date to convert I believe
21 they converted.

22 Q. Okay.

23 Is it your understanding that the
24 company Drinks Americas could have stopped or
25 prevented a conversion of those notes to

00084

1 Kassai

2 equity if they chose to do so?

3 MS. WALSH: I'm sorry, I have to
4 object. Can you be more specific, its a
5 vague question.

6 MR. GOPSTEIN: You can object, I
7 think it's a perfectly valid question.

8 MS. WALSH: You will get a vague
9 answer.

10 A. I'm not sure.

11 Q. Do you know whether in accordance
12 with the terms of the convertible promissory
13 note Drinks Americas could have refused to
14 allow the noteholder to convert to equity?

15 A. I don't know the terms of the note
16 offhand.

17 Q. Okay.

18 Getting back to my original
19 question, could you point to what you believe

12-12-07 phillip kassai v drinks america holdings - kassai.txt
to be the language that gives you the right,
gives Sloan the right to receive warrants
under the December investment banking
agreement, December 2004?

MS. WALSH: If you're asking for a
legal opinion, I object as unfair.

00085

Kassai
A. I'm not an attorney.
Q. Are you familiar with investment
banking agreements in general, have you worked
with them?
A. Yes, I have.
Q. All right.
Can you read paragraph four to
yourself.
A. Okay.
Q. Paragraph four is actually a
rather long paragraph so let me cut to the
chase.
Let's look at 4.1B. Do you see
4.1B?
MS. WALSH: He's read paragraph
4.1B.
MR. GOPSTEIN: No, he couldn't have
read it, he looked at it for a second and
then he said yes, so I am going to try to
narrow it down.
MS. WALSH: You can ask whatever
you want, if you want to withdraw your
request, that's fine.
Q. Have you previously read this

00086

Kassai
agreement before coming here today?
A. Yes.
Q. When was the last time that you
read it?
A. I don't recall.
Q. When was the first time that you
read it?
A. I think you asked me that already,
I told you most likely subsequent to its
execution.
Q. Have you reviewed any documents at
all in preparation for your testimony here
today?
A. I have glanced over several
documents, yes.
Q. What have you looked at?
A. I looked over signature pages on
the securities purchase agreement.
Q. Okay.
A. I have looked at a list of the
possible investors.
Q. What else?
A. I have looked at Drinks Americas'
10-K and the banking agreements.

00087

Kassai

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2 Q. Okay.

3 Is it accurate to say that based
4 upon the December 27th, 2004 investment
5 banking agreement that Sloan Securities was
6 hired to raise between 6 and \$10 million of
7 equity for Drinks Americas?

8 A. No.

9 Q. Look on the first page, paragraph
10 1.2, financing. Tell me if that refreshes
11 your recollection?

12 MS. WALSH: Objection, he didn't
13 say he needed his recollection refreshed,
14 he said no.

15 Q. What is your understanding of what
16 Sloan was hired to do?

17 A. To raise money for Drinks
18 Americas.

19 Q. Well, do you see on the first
20 page, paragraph 1.2 that there is a range of 6
21 to \$10 million that was to be raised?

22 A. I do.

23 Q. Okay.

24 Do you recall whether prior to the
25 raising of 6 to \$10 million whether Sloan

00088

1 Kassai

2 Securities was supposed to do some kind of a
3 bridge financing?

4 A. I do not recall.

5 Q. Look at paragraph 4.1B.

6 Do you see right on the first line
7 it talks about closing of a bridge financing?

8 A. Yes.

9 Q. Isn't that what Sloan Securities
10 did for Drinks Americas was a bridge financing
11 prior to the 6 to \$10 million equity raise?

12 A. No.

13 Q. No?

14 A. No.

15 Q. What was the \$1,350,000?

16 A. As I stated earlier, that was
17 convertible equity.

18 Q. It wasn't bridge financing?

19 A. The terminology bridge financing
20 obviously exists within paragraph B, but as I
21 stated this was convertible equity, it was
22 raised as convertible equity.

23 Q. We know that, it was debt
24 convertible to equity, correct?

25 A. Yes.

00089

1 Kassai

2 Q. Okay.

3 What is your understanding of the
4 term bridge financing as used in the
5 securities industry?

6 A. It is money taken in by a company
7 to bridge that company from point A to point
8 B.

9 Q. All right.

10 And do you know whether Sloan

12-12-07 phillip kassai v drinks america holdings - kassai.txt
raised 6 to \$10 million of equity for Drinks
Americas at any time?

A. I don't believe they did.

Q. But in fact they raised a
1,350,000 in the form of promissory notes
convertible to equity, correct?

A. Correct.

Q. Did you ever see the bridge
financing term sheet?

A. Which one?

Q. In connection with the December
2004 investment banking agreement?

A. I think there were many.

MR. GOPSTEIN: Let me mark this
document as Defendant's Exhibit B. It is

00090

Kassai
a cover letter from Sloan Securities to
Bruce Klein dated April 2nd, 2007 and
attached to it is a December 27th, 2004
investment banking agreement with
schedules including schedule B entitled
bridge financing term sheet, for
identification.

(Defendant's Exhibit B, cover
letter and investment banking agreement
with schedules, marked for
identification, as of this date.)

MS. WALSH: Are there any Bates
numbers on that at all or is it something
that you provided?

MR. GOPSTEIN: I provided it.

MS. WALSH: So it has no Bates
numbers?

MR. GOPSTEIN: No.

MS. WALSH: The record should
reflect that because there are duplicate
copies with pieces of documents on the
record, the sources where they were from
Plaintiffs there were Bates, and when
they were Defendants they were not Bates

00091

Kassai
stamped, correct?

Can we have that stipulation?

MR. GOPSTEIN: No.

MS. WALSH: You won't stipulate to
that?

MR. GOPSTEIN: No.

MS. WALSH: You won't stipulate as
to whether or not you did not stamp a
single paper that you turned over to me?

MR. GOPSTEIN: I have not used
Bates stamps, so what's the point?

MS. WALSH: I want to have it
identified correctly and I'd like to see
it.

MR. GOPSTEIN: I'm marking it.

MS. WALSH: Can I have a courtesy
copy so that I can see it?

Have we gotten that before?

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20 MR. GOPSTEIN: Yes.
21 MS. WALSH: Can I see it?
22 MR. GOPSTEIN: Yes, after he marks
23 it.
24 MS. WALSH: You don't have a copy
25 for me?

00092

1 Kassai
2 MR. GOPSTEIN: No.
3 This document was faxed to you last
4 week along with my cover letter saying
5 that I had just gotten it from Joe
6 Cannella asking you to withdraw the case,
7 that was the cover letter.
8 MS. WALSH: I'll take your word for
9 it that Defendant's Exhibit B was
10 provided to me the day that you got it.
11 MR. GOPSTEIN: Yes.
12 Q. Mr. Kassai --
13 MS. WALSH: He's still looking at
14 the document.
15 Q. Oh.
16 A. Yes.
17 Q. Mr. Kassai, first I want you to
18 look at the cover letter from Sloan Securities
19 signed by Jim Ackerman, CEO to Bruce Klein,
20 its dated April 2nd, 2007.
21 Do you see an item two where it
22 says that 78,300 shares should be issued to
23 yourself?
24 A. Yes.
25 Q. Does that refresh your

00093

1 Kassai
2 recollection as to the number of shares or
3 warrants exercisable for shares that you are
4 claiming in this lawsuit?
5 A. No, not in its entirety.
6 Q. What other shares or warrants are
7 you entitled to besides the 78,300 pursuant to
8 the December 2004 investment banking
9 agreement?
10 A. There was a warrant issued for
11 300,000 warrants that is not addressed in this
12 letter here.
13 Q. Well, this letter talks about
14 217,500 common shares arising from the
15 \$1,350,000 raised by Sloan for Drinks.
16 Are you saying that you're
17 entitled to warrants from something other than
18 the 1,350,000?
19 A. I'm talking about an executed
20 document of a warrant for 300,000 warrants
21 from Drinks Americas to Sloan Equity Partners.
22 That is not addressed in this agreement or
23 this exhibit.
24 Q. The warrant that you're referring
25 to is this, Plaintiff's Exhibit 5 dated

00094

1 Kassai

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May 9th, 2005, correct?

A. There is an attachment that needs to go with this which is the investment banking agreement from September '05 as well.

Q. How could you attach an investment banking agreement of September '05 to a document that's dated May of '05?

A. Because there had been amendments made to the financing for the company, the amounts, the terms.

Q. Are you saying that Sloan Securities is entitled to warrants as a result of the September 2005 investment banking agreement?

A. That's not what I'm saying. I'm saying there had been amendments made as a result of these two documents which I hold in my hand; that's how I arrive at the number of 125,000 roughly.

Q. You're saying the two documents that you're holding are the investment banking agreement from December '04 and the stock purchase warrant from May '05, correct?

A. Correct.

00095

Kassai

Q. The reason those warrants were due had something to do with the 1,350,000 that was raised by Sloan for Drinks, correct?

A. Correct, and for further efforts provided by Sloan to the company.

Q. You're saying there is a third document that would entitle you to additional warrants?

A. I'm saying that there is a third document that would help, that needs to be viewed in support of this warrant purchase, this stock.

Q. What document is that?

A. I just stated it earlier, there is a September '05 investment banking agreement.

Q. I just asked you that same question.

Are you saying the September 2005 investment banking agreement in any way, shape or form entitles you or Sloan Securities to additional compensation?

MS. WALSH: You want to show it to him, do you have it?

MR. GOPSTEIN: No, because frankly

00096

Kassai

I thought it was not relevant. But he seems to recall it so why don't you tell me what your recollection is.

Q. How did the September 2005 investment banking agreement entitle you or Sloan Securities to anything?

A. If you would look at paragraph, I would need it in front of me, so if you have that.

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11 Q. Maybe I do have it, here it is, I
12 do have it. Here it is, a document dated
13 September 25th, 2005.

14 Tell me what compensation of any
15 kind Sloan Securities earned pursuant to the
16 September 29th, 2005 investment banking
17 agreement?

18 A. In paragraph 1.1, "Advisory
19 services in consideration of such financial
20 advisory services and as a material inducement
21 for Sloan Securities to enter this agreement,
22 the company shall issue to Sloan upon
23 execution of this agreement a five-year
24 warrant to purchase 100,000 shares of the
25 company's common stock at an exercise price of

00097

1 Kassai
2 \$0.45 per share."

3 Q. How much of these shares do you
4 believe you're entitled to?

5 A. My 40 percent.

6 Q. That would be 40,000?

7 A. Yes.

8 Q. Do you know whether the shares
9 were ever issued?

10 A. My belief is they were not just
11 like the other warrant was not issued as well.

12 Q. Was there any demand ever made for
13 the 100,000 shares of common stock or a
14 warrant to purchase 100,000 shares of common
15 stock pursuant to the September 29th, 2005
16 investment banking agreement?

17 MS. WALSH: By anyone in the
18 universe?

19 MR. GOPSTEIN: By anyone to his
20 knowledge.

21 A. As a result of Drinks Americas'
22 failure to execute on the initial warrant it
23 was a futile exercise for us to go about
24 asking for the additional warrants that were
25 due to us.

00098

1 Kassai
2 Q. So you just didn't bother?
3 A. Its not that we didn't bother, the
4 warrants in question right now is what we are
5 debating.

6 Q. But I mean prior to this lawsuit
7 no demand was ever made for the warrants to
8 purchase 100,000 shares, correct?

9 MS. WALSH: Do you mean by Phillip
10 Kassai or by anyone in the world?

11 MR. GOPSTEIN: By anyone.

12 MS. WALSH: To the extent that you
13 know and can answer. If it involves
14 communication with an attorney, if it
15 involves privileged communications, I
16 instruct you not to answer.

17 Q. No, did anyone including an
18 attorney ever demand a warrant for 100,000
19 shares pursuant to the September 29th, 2005

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investment banking agreement?

MS. WALSH: I'll object and I think
it calls for privileged communications.

MR. GOPSTEIN: No, it doesn't. I'm
asking if he knows. Are you kidding?

MS. WALSH: How do you know?

00099

Kassai

MR. GOPSTEIN: Its a perfectly
valid question.

MS. WALSH: How does he know if
someone from Sloan Equity wrote a letter
with a lawyer?

MR. GOPSTEIN: If he knows, he
knows, if he doesn't know, he doesn't
know.

MS. WALSH: You're asking about
anyone in the world. How many people in
the world are suing Drinks, we don't know
or demanding, sending demand letters.

MR. GOPSTEIN: Its actually
interesting that its only Phillip Kassai.
Well, we will get to that later on.

MS. WALSH: I can't instruct him
not to answer. If he thinks it is going
to involve attorney/client
communications, let me talk to my client.

MR. GOPSTEIN: You can't be
serious. I'm asking whether he has
knowledge whether a demand was made by
anyone including an attorney for the
payment or the issuance of these

00100

Kassai

warrants. That's a perfectly valid
question. You can't possibly object and
certainly you aren't going to direct him
not to answer.

MS. WALSH: If that's what the
question is?

MR. GOPSTEIN: Yes, and it's the
third time I asked.

MS. WALSH: If it's a yes or no
question then he can answer it. If
you're asking for --

MR. GOPSTEIN: I'll ask it again,
hopefully you won't object.

Q. Mr. Kassai, to your knowledge, has
anyone ever demanded the issuance of the
warrant for 100,000 shares pursuant to the
September 29th, 2005 investment banking
agreement prior to this lawsuit?

A. A portion of it.

Q. Any portion of it?

A. My belief is yes.

Q. Who made the demand and when?

A. Anthony Cole (phonetic).

Q. Who is Anthony Cole?

00101

1

Kassai

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A. That's the attorney privilege.

MS. WALSH: I'm going to object.

MR. GOPSTEIN: Are you kidding me?

I'm asking about a demand that was made. That has nothing --

MS. WALSH: You can ask all you want to.

MR. GOPSTEIN: You're kidding.

MS. WALSH: If you read the document in your hand you might know who Anthony Cole is.

Q. who is Anthony Cole?

MS. WALSH: He represented my client. The demand letters --

MR. GOPSTEIN: I don't want your testimony.

Q. who is Anthony Cole?

MS. WALSH: I'm directing my client not to talk about communications he made with counsel.

MR. GOPSTEIN: That's obvious, I haven't asked him a single question about that.

Q. who is Anthony Cole?

00102

Kassai

A. He was my attorney.

Q. He was your attorney?

A. Yes.

Q. When did you hire him?

A. June or July of '07, I don't remember exactly, recall the date.

Q. For what purpose did you hire him?

A. To go after the money that is owed to me by Drinks Americas.

Q. Are you saying that your attorney made a demand to Drinks Americas for a warrant to purchase 100,000 shares pursuant to the September 29th, 2005 investment banking agreement?

A. Its attorney jargon, I am not really sure what, how it was.

Q. Did you ever see such a demand from your attorney to anyone at Drinks Americas?

A. Stating that a portion of that was to be --

Q. Either the entire 100,000 or any portion of it?

A. I believe so.

00103

Kassai

Q. where and when did you see such a demand?

A. I think there was a letter, numerous letters sent to Drinks Americas on my behalf.

Q. Demanding what?

A. what was due do me.

Q. According to your testimony, you said that you are owed 40,000 warrants

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pursuant to this investment banking agreement
because that would be your cut of this,
correct?

MS. WALSH: Sorry, objection, that
is really vague. The record doesn't
reflect what you're pointing out or
gesturing.

MR. GOPSTEIN: You know what, I
don't care, you can object, do not speak,
just object.

MS. WALSH: Please do not speak to
me like that again, I have tolerated way
too much from you, sir. If you can speak
to me in that manner --

MR. GOPSTEIN: You're going to

00104

Kassai
tolerate more if you keep making
frivolous objections.

MS. WALSH: It is not frivolous.

Q. Are you entitled to 40,000
warrants?

MS. WALSH: Why don't you look at
the Bates stamped documents that have
been provided to you.

Q. Are you entitled to 40,000
warrants?

MS. WALSH: To the extent you can
answer, answer.

A. My belief is I'm entitled to that,
yes.

Q. Did you own 40 percent of Sloan
Securities Corp?

A. No, I don't.

Q. Was this warrant ever assigned by
Sloan Securities Corp to Sloan Equity
Partners?

A. I don't understand your question.

Q. What entity is supposedly entitled
to 100,000 warrants pursuant to the September
29th, 2005 investment banking agreement?

00105

Kassai
MS. WALSH: Objection.

A. I think you need to look at the
investment banking agreement.

Q. I'm holding it up for you to see.
Do you have it in front of you?
Who was it signed with?

A. It would say Sloan Securities.

Q. Right.
You don't own 40 percent of Sloan
Securities Corp., do you?

A. No, I don't.

But as I stated earlier that the
cut internally for commissions and all
compensations on deals was to be 40 percent
distributed to Phillip Kassai.

Q. Is there any document whereby
Sloan Securities Corp has actually assigned
any of its rights under the September 29th,

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20 2005 investment banking agreement either to
21 you or to Sloan Equity Partners?

22 A. Please repeat the question.

23 MR. GOPSTEIN: Read it back,
24 please.

25 (Record read.)

00106

1 Kassai

2 A. I don't know, I don't know all the
3 documents issued by Jim Ackerman to Drinks
4 Americas.

5 Q. You certainly don't have authority
6 to act on behalf of Sloan Securities Corp, do
7 you?

8 A. Do not.

9 Q. Okay.

10 I want you to take a look at the
11 bridge financing term sheet, schedule B of
12 what we marked now as Defendant's Exhibit B.
13 Its the last two pages of the document.

14 A. Yes.

15 Q. Could you describe what schedule B
16 is in your own words?

17 A. This is a schedule that was
18 amended numerous times.

19 Q. Is this what appears to be the
20 first version of it?

21 A. To my knowledge this was one of
22 the first versions of this.

23 Q. Okay.

24 what is this in your own words?

25 A. A term sheet.

00107

1 Kassai

2 Q. A term sheet for the bridge
3 financing, correct?

4 A. A term sheet.

5 Q. Does it not say bridge financing
6 term sheet in bold capital letters?

7 MS. WALSH: You want him to read
8 the document? I object to your tone of
9 voice.

10 A. Schedule B bridge financing term
11 sheet.

12 Q. This is a term sheet for the
13 bridge financing, correct?

14 MS. WALSH: Objection.

15 A. If you so call it a bridge
16 financing. This was not the term sheet that
17 was ultimately used in the financing for
18 Drinks Americas so I'm not really sure what
19 you're going at with this.

20 Q. Okay.

21 A. This was one of many term sheets
22 as I stated earlier.

23 Q. That's all right, let's deal with
24 this one.

25 The amount was subsequently

00108

1 Kassai

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changed in the later versions, correct?

A. As were the terms.

Q. Okay.

But this was the initial bridge
financing term sheet that was attached to the
contract, was it not?

MS. WALSH: He's not a party to the
contract, I object.

MR. GOPSTEIN: You can object all
you want, I'm asking him whether he
knows.

MS. WALSH: Fine.

A. As my counsel said, I have no idea
which schedule ultimately was attached to the
back of the contract. And just because you
have it stapled doesn't necessarily mean that
that was the one used as evidenced by the fact
that this bridge financing term sheet as you
call it was amended many times.

Q. Fine.

Do you see how this document at
the top indicates it was from Sloan Securities
and it says its page 14 of 15 and page 15 of
15?

00109

Kassai

A. I do.

Q. I just want you to realize that I
didn't put these pages together, it was the
way it was received.

Let's look at the bridge financing
term sheet.

MS. WALSH: By the way it was
received you're referencing your Exhibit
B, correct, Defendant's Exhibit B?

MR. GOPSTEIN: Correct.

MS. WALSH: This was a document
that you provided.

MR. GOPSTEIN: Yes.

MS. WALSH: And it was provided to
you from Sloan Securities, is that what
you're saying?

MR. GOPSTEIN: It went to someone
from Sloan Securities, someone at fax
number (212) 779-9928.

Q. Could you read for the record the
description of the investment pursuant to the
bridge financing term sheet, its just one
line.

MS. WALSH: I object to him

00110

Kassai

reading. Go ahead, you're going to make
him read the document, then why did you
mark it?

MR. GOPSTEIN: Yes, one line.

A. "Senior convertible promissory
(notes) and (warrants)."

Q. Now, the warrants that are being
referred to on that line are the warrants that
are exercisable pursuant to those promissory

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notes, correct?

A. Incorrect.

Q. What are they?

A. They cover all the warrants that are as a result of the financing of Drinks Americas.

Q. And how do you come up with that conclusion from this document?

MS. WALSH: You're making him your expert?

Q. I want know what is your basis for making that statement. We are talking about a bridge financing term sheet that is describing the investment.

I want to know how --

00111

Kassai

A. I'm not an attorney but if you will turn to paragraph 4.1 --

Q. Yes.

A. "In addition to the foregoing upon consummation of a financing or promptly following a late rejection, the company will issue to Sloan and/or its designees warrants to the purchase such number of securities as shall be equal to five percent of the number of securities including stock and warrants issued to investors in the financing at the same time at the same per share price or exercise price applicable to securities sold in the financing."

Q. What you read is a defined term in the investment banking agreement?

MS. WALSH: Are you asking him a question?

Q. Correct?

MS. WALSH: A defined term?

MR. GOPSTEIN: Yes, defined as warrants.

Q. Early in the investment bank agreement, correct?

00112

Kassai

A. This is the investment banking agreement.

Q. Correct?

A. Yes.

Q. You just read from page --

MS. WALSH: Exhibit Defendant's B. I'll stipulate that that's what's he read from.

Q. What paragraph was that, 4.1?

A. 4.1.

Q. It was 4.1, correct?

A. Yes.

Q. There is a definition of the term warrants in paragraph 4.1, correct?

A. Yes, there is.

Q. The term is redefined in the bridge financing term sheet, correct, in the investment section?

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20 MS. WALSH: I don't have a copy of
21 it, a courtesy copy for counsel. Are you
22 reading from it? I'll accept in good
23 faith that you're reading from a document
24 if that's what you're telling me.
25 MR. GOPSTEIN: I'm asking a

00113

1 Kassai
2 seasoned investment banker to interpret a
3 document that is used at a securities
4 firm that he worked for.
5 A. As I stated earlier --
6 MS. WALSH: Are you asking for an
7 interpretation, are you asking for him to
8 read?
9 MR. GOPSTEIN: His understanding.
10 A. My understanding --
11 MS. WALSH: Its your deposition and
12 we're prepared to stay.
13 MR. GOPSTEIN: Thank you.
14 MS. WALSH: So if you want him to
15 read from the document during the
16 course --
17 MR. GOPSTEIN: I asked him for his
18 understanding of the document. In order
19 to get his understanding of the document
20 sometimes you have to read certain
21 passages.
22 A. My understanding is that exhibit
23 that you're referring to was not the one used
24 in any regard. So in order to understand
25 warrants as you asked me earlier, I refer back

00114

1 Kassai
2 to the investment banking agreement.
3 Q. Although --
4 A. Which is clearly the agreement
5 used as a seasoned investment banker.
6 Q. You're saying this bridge
7 financing term sheet was not attached to the
8 agreement as a schedule B?
9 A. I have no idea which one was
10 ultimately attached to the executed document
11 by Drinks Americas.
12 Q. But you know that a bridge
13 financing term sheet was included in the
14 original agreement and then was amended,
15 correct?
16 A. Correct.
17 MS. WALSH: I need a restroom break
18 when you have a chance.
19 Q. Mr. Kassai, look at the end of
20 paragraph 1.2, the last sentence of paragraph
21 1.2.
22 A. In which document?
23 Q. The December 2004 investment
24 banking agreement, Defendant's Exhibit B. Can
25 you do that, the last sentence of paragraph

00115

1 Kassai

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1.2.

2
3 A. I don't have it.
4 MS. WALSH: I'm looking at it for a
5 second.
6 A. Okay.
7 Q. Doesn't it essentially say that
8 Sloan is going to do a bridge financing prior
9 to the consummation of the financing?
10 MS. WALSH: Objection.
11 MR. GOPSTEIN: You can object all
12 you want.
13 Q. Please answer the question.
14 A. It is my understanding that that
15 had changed numerous times.
16 Q. What had changed?
17 A. What was set out initially as a
18 small bridge financing which the number refers
19 to as \$550,000 clearly was not, that was not
20 raised by Sloan for Drinks America.
21 Q. More than that was raised,
22 correct?
23 A. Substantially more than that was
24 raised.
25 Q. 1,350,000 was raised?

00116

1 Kassai
2 A. Correct.
3 Q. They amended the bridge finance
4 term sheet to reflect the fact they were
5 raising more money, correct?
6 A. No, they amended it to show it was
7 no longer going to be what you're terming as a
8 bridge financing agreement.
9 Q. Show me where it says that. Where
10 does it say its no longer going to be a bridge
11 financing?
12 MS. WALSH: Objection.
13 MR. GOPSTEIN: He just said that.
14 I'm going to take his own words and
15 ask him to explain his own words.
16 MS. WALSH: Go ahead.
17 A. If you would provide to me the
18 documentation of the amended term sheets, I
19 can show you.
20 Q. Okay.
21 RQ
22 MR. GOPSTEIN:
23 Let me first of all make a very
24 clear demand for production of all of the
25 term sheets pursuant to any investment

00117

1 Kassai
2 banking agreement entered into between
3 Sloan and Drinks.
4 MS. WALSH: I suggest that you make
5 that of your client, sir, but I'll let
6 you make a record.
7 RQ
8 MR. GOPSTEIN: Let me repeat that
9 I'm calling for the production of all
10 term sheets that Sloan prepared or

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11 entered into that in any way amended or
12 changed the original term sheet. Its
13 obviously very important at this point
14 that we have all of them. I don't think
15 we have been provided with all of them.
16 If there are numerous term sheets I want
17 to see all of them.

18 So quite simply, I call for the
19 production of all term sheets, bridge
20 financing term sheets or other term
21 sheets in connection with the investment
22 banking agreement of December 2004 and
23 September 2005.

24 Pursuant to your request, Mr.
25 Kassai, I'm going to mark as Defendant's

00118

1 Kassai

2 Exhibit C an amendment number one to an
3 investment banking agreement dated
4 February 24th, 2005, for identification.

5 (Defendant's Exhibit C, amendment
6 to investment banking agreement, marked
7 for identification, as of this date.)

8 Q. Mr. Kassai, do you recognize
9 Defendant's Exhibit C as --

10 A. Yes.

11 Q. -- amendment number one to the
12 investment banking agreement?

13 A. Yes.

14 Q. Okay.

15 And do you see where in paragraph
16 two the bridge financing is increased to a
17 million dollars?

18 A. Yes, I see that.

19 Q. So where or in what document are
20 you referring to where it says that this is no
21 longer a bridge financing, its some other kind
22 of financing?

23 A. What I meant was that the terms of
24 this deal changed.

25 Q. The terms of the bridge financing

00119

1 Kassai

2 changed?

3 MS. WALSH: Is that a question?

4 Q. Correct.

5 A. Clearly as it says amendment to.

6 Q. Okay.

7 And one of the ways that the terms
8 of the bridge financing changed is that it was
9 increased to a million dollars on February
10 24th, 2005, correct, one of the ways?

11 A. One of the ways, yes.

12 Q. All right.

13 But ultimately 1,350,000 was
14 actually raised in the bridge financing,
15 correct?

16 A. No.

17 Q. How much was raised in the bridge
18 financing?

19 A. I'm unaware as to the way you're

12-12-07 phillip kassai v drinks america holdings - kassai.txt
describing bridge financing.

Q. I'm not describing it, I'm putting
a document in front of you that was signed by
Sloan Securities and Drinks Americas, its not
my term.

A. But the term in there and I'm not

00120

Kassai
a lawyer, says up to a million dollars. So
according to what you're saying, what would
the \$350,000 extra be categorized as?

Q. That's my question to you.

A. Okay.

Q. What was it?

A. So it is my understanding that as
a result of these terms changing numerous
times, it was to be deemed that this was
convertible equity which is what I stated in
the beginning.

Q. So are you saying that the first
million dollars was bridge --

A. No, that's not what I'm saying.

Q. -- bridge financing and 350 was
some sort of equity?

A. Don't put words in my mouth,
that's not what I said.

Q. Well, what are you saying?

A. I said as a result of the terms
changing, the entire funding going to Drinks
Americas was a convertible equity deal.

Q. Where does it say that? Show me a
single document anywhere that says that.

00121

Kassai
MS. WALSH: Objection, I object to
the form of that question and I object to
the way of posing it to my client.
That's not a fair question and you know
it.

Q. I am going to repeat the exact
same question.

Show me a document anywhere that
says what you're testifying to.

A. I'm not a lawyer.

Q. I'm not asking you a legal
question, you said that somewhere it says --

A. I said its my understanding, that
is what I said.

Q. Based upon what?

A. The various amendments that took
place.

Q. What other amendments took place
besides amendment number one?

A. I believe there was another
amendment.

RQ

MR. GOPSTEIN: I call for the
production of any and all amendments to

00122

1

Kassai

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2 the investment banking agreement. I'm
3 unaware of any other amendment other than
4 amendment number one. If there is such,
5 then obviously we should both have it
6 and I would call for the production. I
7 don't have any other amendment, for the
8 record.

9 Q. Mr. Kassai, are you certain or are
10 you speculating that there was another
11 amendment to the investment banking agreement
12 other than amendment number one?

13 A. I don't remember all the documents
14 that I have seen. But to the best of my
15 recollection, yes, there is another amendment.

16 Q. What do you think it says?

17 A. I don't recall.

18 Q. You think there is another
19 amendment that recasts the whole deal, changes
20 it from bridge financing to some sort of an
21 equity raise?

22 A. It was always an equity raise.

23 Q. Even though it clearly says bridge
24 financing?

25 MS. WALSH: Now you're badgering.

00123

1 Kassai
2 It is your time, use it how you want to,
3 but I object.

4 Q. Where does it say in the amendment
5 to the investment banking agreement that this
6 is an equity raise?

7 A. I never said it was, I said it was
8 a convertible equity raise. Once again you're
9 putting words in my mouth.

10 Q. I don't want to put any words in
11 your mouth.

12 You said there was another
13 amendment. I want know what the other
14 amendment says because no one has ever seen
15 it.

16 MS. WALSH: Objection.

17 Q. What do you think the second
18 amendment says?

19 A. I can't speculate, I don't have it
20 in front of me.

21 Q. Okay.

22 Do you know for sure whether a
23 second amendment or a third amendment actually
24 ever existed?

25 MS. WALSH: Objection, please, you

00124

1 Kassai
2 have exhausted this.
3 A. You asked me that a number of
4 times.

5 Q. You're not sure?

6 A. Correct.

7 Q. Okay.

8 I want to show you what has
9 previously been marked Plaintiff's Exhibit 5,
10 you have it in front of you. Its the stock

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purchase warrant dated May 9th, 2005.

Do you see right on the first page
sort of smack in the middle of that paragraph
at the bottom, it says, "(Excluding the
private placement to investors of notes of up
to \$1,350,000)" --

A. I do see that.

Q. Okay.

Do you have any reason to believe
that the \$1,350,000 that was raised was
anything but promissory notes convertible to
equity?

A. I'm not sure what you're asking.

Q. Well, you indicated that you
thought somehow the terms changed or the

00125

Kassai

description of what was raised changed, and so
I'm showing you a document that was signed in
May 2005 where it describes the 1,350,000 as
notes.

According to your understanding of
what happened, is that an accurate description
of the money that was raised?

A. No, because it doesn't describe
what the money was actually raised for. It
was, if you want to get technical and again
I'm not a lawyer, but it was a convertible
note, it doesn't talk about anything with
regard to conversion, and I think notes is
just the short terminology for what the
company is attributing the \$1.35 million
raise.

Q. I thought I asked you that precise
question so maybe if you would listen
carefully, you might not have a problem with
it or you might.

A. I was listening carefully.

MS. WALSH: I would like to take
the restroom break.

Q. Let me finish the question and we

00126

Kassai

are done.

Do you have any reason to believe
the \$1,350,000 that was raised by Sloan for
Drinks Americas was anything but promissory
notes convertible to equity?

MS. WALSH: Objection, this
question had been asked and answered. I
mean --

MR. GOPSTEIN: He hasn't answered
it, it has been asked and he hasn't
answered it.

MS. WALSH: He can answer it.

A. I believe the \$1.35 million raised
was a promissory convertible note into equity.

Q. So the description on the first
page of this document stock purchase warrant
is accurate, correct?

A. No, its not accurate.

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20 Q. They are notes, right? They are
21 promissory notes that were convertible to
22 equity?

23 A. You just said promissory notes,
24 the word promissory doesn't even exist there,
25 how can be it be accurate?

00127

1 Kassai
2 Q. Are you saying you don't know what
3 the word notes means?

4 A. Are you saying you don't know what
5 the word promissory means?

6 Q. I do, I'm asking the questions
7 here and you're going to answer them.

8 The question is what is your
9 understanding of the term notes in the
10 securities business or the financial industry
11 really?

12 A. A note means an obligation to pay
13 something.

14 MR. GOPSTEIN: Let's take a
15 bathroom break.

16 Off the record.

17 (Whereupon, an off-the-record
18 discussion was held.)

19 (Time noted: 5:15 p.m.)

20 (Time noted: 5:27 p.m.)

21 Q. Mr. Kassai, when you found out
22 that Dan Myers had allegedly diverted funds
23 earmarked for Drinks Americas, did you tell
24 him that you were going to report that to any
25 authorities?

00128

1 Kassai

2 A. No.

3 Q. Have you reported it to any
4 authorities?

5 A. No.

6 Q. Do you intend to?

7 A. No.

8 Q. When is the last time you spoke to
9 Jim Ackerman?

10 A. I believe you asked me that
11 question and I answered it.

12 Q. When was the last time you spoke
13 to Jim Ackerman about this case?

14 A. I believe it was sometime most
15 likely in September to the last of my
16 recollection.

17 Q. Of this year?

18 A. Of this year.

19 Q. What did you talk about?

20 A. We talked about the warrants due
21 to Sloan from Drinks Americas.

22 Q. Did Jim Ackerman say that he
23 thought that Sloan was owed warrants as well?

24 A. Yes.

25 Q. Do you know why neither Jim

00129

1 Kassai

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Ackerman nor Sloan Securities nor Sloan Equity
Partners has brought any lawsuit against
Drinks Americas?

MS. WALSH: Objection.
A. I couldn't speculate on that.
Q. Did you ever ask Jim Ackerman,
"Hey, why aren't you suing those guys?"
A. I couldn't care less.
Q. You never asked him that?
A. I didn't need to.
Q. Regardless of whether you needed
to or not, did you ever ask him anything along
those lines as to why he's not suing?
A. I don't recall.
Q. Did he ever tell you why he's not
suing?
A. No.
Q. As you sit here today do you have
any idea why he's not suing?
A. No idea.
Q. Would it be accurate to say that
Sloan Securities did not raise any equity for
Drinks Americas in connection with the
investment banking agreement?

00130

Kassai
MS. WALSH: Objection, I'm sorry, I
didn't understand it. You can answer if
you do.
Q. I'll say it again.
A. I don't think its accurate.
Q. I thought it was pretty clear.
Is it accurate to say Sloan
Securities did not raise any equity for Drinks
Americas in connection with the December 2004
investment banking agreement?
A. I answered, I believe that's not
accurate.
Q. So if Mr. Myers said that under
oath you think he would be giving false
testimony?
A. I don't know what Mr. Myers said
or I'm not understanding what your --
Q. I just want to know if Mr. Myers
said that under oath, do you think that would
be a false statement?
A. That there was never equity
raised --
Q. That Sloan did not raise any
equity for Drinks Americas in connection with

00131

Kassai
the investment banking agreement?
A. I can't answer on behalf of Dan
Myers.
Q. I'm not asking you to answer on
behalf of him. I want to know whether that's
an accurate statement?
A. Whether Dan Myers --
Q. No, let me rephrase.
Is it accurate to say that Sloan

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Securities did not raise any equity for Drinks
Americas in connection with the investment
banking agreement between the two firms?

A. Please describe how you're
defining equity.

Q. Equity is not debt. Equity as I
understand it and as I would be asking the
question is an investment in return for which
you receive equity in the company that you're
investing?

A. Your statement is inaccurate.

Q. What do you believe equity is?

A. I believe its anytime a company
takes in capital that effects the net value of
a company.

00132

Kassai

Q. Anything that effects the net
value of a company.

Let's say you take in a straight
loan, a straight loan with a straight
promissory note. That effects the value of
the company, doesn't it, that has to go to the
balance sheet, correct; yes or no?

A. Correct.

Q. You think that's equity?

A. Again, how are you defining a
loan?

Q. You said that equity is anything
that a company takes in that effects the
finances.

Is that what you said?

A. No, I didn't say finances.

Q. What was the word you used?

A. The value.

Q. The value.

wouldn't a loan affect the value
of a company?

A. Sure it could.

Q. So if you take in a straight loan
are you saying that is equity?

00133

Kassai

A. One is not inclusive of the other.

Q. One has nothing do with the other,
correct, debt is debt and equity is equity,
right?

A. Not all the time.

When there is a convertible
instrument, that is what is the topic at hand.

Q. Right.

A. Okay.

Q. And the notes that we are talking
about here today were debt instruments that
were convertible to equity.

Isn't that a fair statement of
what happened?

A. That's a rough, fair statement,
yes.

Q. Okay.

Is it accurate to say that Sloan

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Securities successfully raised \$1,350,000 in a
bridge financing in the form of debt
convertible to equity?

A. It is fair to say that Sloan
raised \$1.35 million of convertible equity for
Drinks Americas.

00134

1 Kassai

2 Q. There was no debt involved?

3 A. That was the convertible, the
4 convertible from the promissory note into
5 equity.

6 Q. That was pursuant to the bridge
7 financing that Sloan did for Drinks Americas,
8 correct?

9 MS. WALSH: Objection.

10 A. I think I answered this.

11 Q. Didn't Sloan do a bridge financing
12 for Drinks?

13 MS. WALSH: Objection.

14 A. I answered this question, I think
15 you have asked it about a half dozen times
16 already.

17 Q. I don't think so.

18 A. You don't think what, that you
19 asked it a dozen times or that I answered it?

20 Q. Both, its a simple question
21 really.

22 Did Sloan do a bridge financing
23 for Drinks Americas at any time?

24 A. Sloan raised \$1.35 million for
25 Drinks Americas in the form of a convertible

00135

1 Kassai

2 instrument.

3 Q. Okay.

4 MR. GOPSTEIN: For the record, I'm
5 going to mark and hand counsel
6 Defendant's Exhibit D. It is the
7 affidavit of Daniel Myers sworn to today,
8 for identification.

9 (Defendant's Exhibit D, affidavit,
10 marked for identification, as of this
11 date.)

12 MS. WALSH: which has never been
13 produced prior, is that accurate? It has
14 never been produced to me before?

15 MR. GOPSTEIN: Did you hear the
16 last few words? I said it was sworn to
17 today.

18 MS. WALSH: Yes, my question was it
19 has never been produced?

20 MR. GOPSTEIN: Prior to today?

21 MS. WALSH: What time was it sworn
22 to today?

23 MR. GOPSTEIN: Am I under oath
24 here?

25 MS. WALSH: You're not.

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1 Kassai

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MR. GOPSTEIN: I'm just telling you
it was sworn to today and I'm producing
it today on the same day.

MS. WALSH: Can you tell me what
time it was sworn or are you refusing to
answer me?

MR. GOPSTEIN: No.

MS. WALSH: You're not going to
tell me?

MR. GOPSTEIN: No, I'm not going to
tell you.

RQ

MS. WALSH: I would like to have a
courtesy copy of this.

RQ

MR. GOPSTEIN: Absolutely.
I'm done. Subject to the
production of all of the important
documents that I asked for today, I will
conclude today and will hold the
deposition open and after I get the
documents, I may or may not need some
additional time with this witness.

MS. WALSH: I have made my witness

00137

Kassai

available today, counsel has had plenty
of notice of that. I have moved it, in
fact, several times as a courtesy to
counsel and his witnesses. It is only
5:30, we started an hour late because you
were running late, which is not a
problem. We are prepared to stay longer,
there is absolutely no reason to keep
this deposition open, I object for the
record.

RQ

And I'm also going to call for the
immediate production of all documents
that are in your possession or your
constructive possession since you have
now provided an affidavit by a former
member of Sloan who was obviously in your
company today because it is sworn to
before me, meaning Sheldon Gopstein,
December 12th.

We don't know what time that was,
but I am also going to note for the
record that you were 45 minutes late, you
requested taking two breaks so you could

00138

Kassai

go downstairs and meet with people. And
if you need more time, my client is here
and available.

MR. GOPSTEIN: Let me clarify one
thing. I don't need more time today.

MS. WALSH: Today is the time when
my client is available.

MR. GOPSTEIN: I'm telling you I
don't need more time today. In fact, I

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can't question him today on documents that I don't have. If I had the documents I would be more than willing to continue. I'm not leaving because it is late, I'm leaving because I have no further questions concerning the documents that we have before us.

When you produce the additional documents if they exist, the witness has indicated that he's not sure if some of these documents even exist. But if they do, when they are produced I'll let you know whether I need to ask him more questions or not, and for that reason I'm holding the deposition open.

00139

Kassai

MS. WALSH: You will note that you were given documents, you have already noted on the record that you were given documents today, so that's it.

Thank you very much.

Off the record.

(Whereupon, an off-the-record discussion was held.)

(Time noted: 5:42 p.m.)

PHILLIP KASSAI

Subscribed and affirmed to before me
this ____ day of _____, 2007.

00140

Kassai

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Jeremy Frank, a Notary Public within and for the State of New York, do hereby certify:

That PHILLIP KASSAI, the witness whose deposition is hereinbefore set forth, was duly affirmed by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereby

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set my hand on the 15th day of December, 2007.

JEREMY FRANK, MPM

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Kassai
----- I N D E X -----
WITNESS EXAMINATION BY PAGE
MR. KASSAI MR. GOPSTEIN 5
----- INFORMATION REQUESTS -----
TO BE FURNISHED: Page 18
REQUESTS: Pages 30, 71, 72, 73,
116, 117, 121, 136, 137
----- EXHIBITS -----
Defendant's A Complaint 69
Defendant's B Letter and investment
Banking agreement with
Schedules 90
Defendant's C Amendment to investment
Banking agreement 118
Defendant's D Affidavit of Daniel
Myers 135

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PHILLIP KASSAI
*** ERRATA SHEET ***

NAME OF CASE: KASSAI v. DRINKS AMERICA
DATE OF DEPOSITION: December 12th, 2007
NAME OF WITNESS: PHILLIP KASSAI
PAGE LINE FROM TO

PHILLIP KASSAI
Subscribed and affirmed to before me
this ____ day of _____, 2007.

12-12-07 phillip kassai v drinks america holdings - kassai.txt

23

24

25

□

EXHIBIT F

Coldwell, Mark

From: Daniel M. Myers [danm@sloansecurities.com]
Sent: Wednesday, March 09, 2005 5:31 PM
To: 'Coldwell, Mark'; 'Steven Uslaner'
Cc: 'Littman, Mitchell'
Subject: Drinks Americas funding

Mark – as we discussed, investors are now going to be sending their funds to your IOLA acct instead of Cannella's. When the first tranche of capital arrives from Cornell tomorrow it will be for \$445,000 (see attached disbursement letter b/w Drinks and Cornell)

When the funds hit please send out the following:

Wire 1

Amount: \$50,000
Firm: Sloan Securities Corp
Bank: Fleet Bank
Linwood Plaza
Fort Lee NJ 07024
ABA No.: 021200339
Account No.: 0101144172

Wire 2

Amount: \$390,000
Firm: Drinks Americas, Inc
Bank: JP Morgan Chase Bank
92-98 Grove Street
Ridgefield, CT 06877
ABA No.: 021000021
Account No.: 22750036540-65

Obviously, you will take your 5k (the balance 5k when we close the next tranche)

Thanks,

Daniel M. Myers
Managing Director, Investment Banking
Sloan Securities Corp.
444 Madison Ave, 23rd Floor
New York, NY 10022
Tel: (212) 308-2233
Fax: (212) 202-4022
Cell (516) 643-9493
danm@sloansecurities.com
www.sloansecurities.com

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3/14/2005

EXHIBIT G

Coldwell, Mark

From: Daniel M. Myers [danm@sloansecurities.com]
Sent: Monday, March 21, 2005 10:25 AM
To: 'Daniel M. Myers'; 'Steven Uslaner'; 'Littman, Mitchell'; jca@sloansecurities.com
Cc: 'Coldwell, Mark'; 'Rebecca Rubenstein'; 'Bruce Klein'; 'Phil Kassai'
Subject: RE: 2ND Tranch of Drinks Americas Bridge

Just a revised email -- as 20k of the 430k was in check and will not clear for a few days -- we will close on \$410k and as we are expecting more funds shortly anyway we close on the balance when additional funds come in...

Thus the new wires

To Sloan \$41k
 To LK \$5k
 To Drinks \$364k

Daniel M. Myers
Managing Director, Investment Banking
Sloan Securities Corp.
444 Madison Ave, 23rd Floor
New York, NY 10022
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Fax: (212) 202-4022
Cell (516) 643-9493
danm@sloansecurities.com
www.sloansecurities.com

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From: Daniel M. Myers [mailto:danm@sloansecurities.com]
Sent: Friday, March 18, 2005 3:12 PM
To: 'Steven Uslaner'; 'Littman, Mitchell'; jca@sloansecurities.com
Cc: 'Coldwell, Mark'; 'Rebecca Rubenstein'; 'Bruce Klein (pklein1129@aol.com)'; 'Phil Kassai'
Subject: 2ND Tranch of Drinks Americas Bridge

Gentlemen --

- (1) As of today, March 18, 2005, a wire transfer for \$400,000 from Periscope Partners has been sent to your IOLA acct.
- (2) In addition, a wire transfer of \$10k from John Dalfansi of Roth Capital Partners and
- (3) a check in the amount of \$20k from Christopher Jennings of Roth CP has been sent as well.

On Monday, please confirm that you have received these amounts. When you have confirmed this -- please send out the following amounts --

4/5/2005

EXHIBIT H

Coldwell, Mark

From: Daniel M. Myers [danm@sloansecurities.com]
Sent: Tuesday, April 05, 2005 5:37 PM
To: 'Coldwell, Mark'; 'Rebecca Rubenstein'
Cc: 'Uslaner, Steven'; 'Paul Walfish'
Subject: RE: Drinks Americas

Instructions
Please wire transfer

\$153,000 to Drinks Americas
\$17,000 to Sloan Securities Corp.

Daniel M. Myers
Managing Director, Investment Banking
Sloan Securities Corp.
444 Madison Ave, 23rd Floor
New York, NY 10022
Tel: (212) 308-2233
Fax: (212) 202-4022
Cell (516) 643-9493
danm@sloansecurities.com
www.sloansecurities.com

From: Coldwell, Mark [mailto:mcoldwell@lklp.com]
Sent: Tuesday, April 05, 2005 5:38 PM
To: Daniel M. Myers; Coldwell, Mark; 'Rebecca Rubenstein'
Cc: Uslaner, Steven; 'Paul Walfish'
Subject: RE: Drinks Americas

\$169,975 but I told Rebecca to do the instructions for \$170,000 since that's what we are deeming the investments to have totalled.

From: Daniel M. Myers [mailto:danm@sloansecurities.com]
Sent: Tuesday, April 05, 2005 5:04 PM
To: 'Coldwell, Mark'; 'Rebecca Rubenstein'
Cc: 'Uslaner, Steven'; 'Paul Walfish'
Subject: RE: Drinks Americas

How much is in the escrow

Daniel M. Myers
Managing Director, Investment Banking
Sloan Securities Corp.
444 Madison Ave, 23rd Floor
New York, NY 10022
Tel: (212) 308-2233
Fax: (212) 202-4022
Cell (516) 643-9493
danm@sloansecurities.com

4/5/2005

EXHIBIT I

Mark Coldwell

From: Daniel M. Myers [danm@sloansecurities.com]
Sent: Friday, April 15, 2005 12:43 PM
To: Mark Coldwell; 'Daniel Myers'
Cc: Steve Uslaner; 'Paul Walfish'; 'Rebecca Rubenstein'
Subject: RE: Drinks Americas

Disburse as follows
162,000 to Drinks
18,000 to Sloan Securities

Daniel M. Myers
Managing Director, Investment Banking
Sloan Securities Corp.
444 Madison Ave, 23rd Floor
New York, NY 10022
Tel: (212) 308-2233
Fax: (212) 202-4022
Cell (516) 643-9493
danm@sloansecurities.com
www.sloansecurities.com

From: Coldwell, Mark [mailto:mcoldwell@lklp.com]
Sent: Friday, April 15, 2005 12:45 PM
To: Daniel M. Myers; Daniel Myers
Cc: Uslaner, Steven; 'Paul Walfish'; Rebecca Rubenstein
Subject: Drinks Americas

Dan, we have \$180,000 of available investor funds. Please send us disbursement instructions for this amount and also for \$80,000 in case Joe Cannella doesn't get the paperwork completed for the new \$100,000 investor.

Mark F. Coldwell, Esq.
LITTMAN KROOKS, LLP
655 Third Avenue
New York, NY 10017
Tel: (212) 490-2020
Fax: (212) 490-2990

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1/25/2006

EXHIBIT J

Mark Coldwell

From: Daniel M. Myers [danm@sloansecurities.com]
Sent: Thursday, May 05, 2005 4:14 PM
To: Mark Coldwell; 'Daniel Myers'
Cc: Steve Uslaner; 'Rebecca Rubenstein'; jca@sloansecurities.com
Subject: RE: Drinks Americas

confirmed

Daniel M. Myers
Managing Director, Investment Banking
Sloan Securities Corp.
444 Madison Ave, 23rd Floor
New York, NY 10022
Tel: (212) 308-2233
Fax: (212) 202-4022
Cell (516) 643-9493
danm@sloansecurities.com
www.sloansecurities.com

From: Coldwell, Mark [mailto:mcoldwell@lklp.com]
Sent: Thursday, May 05, 2005 3:56 PM
To: Daniel M. Myers; Daniel Myers
Cc: Uslaner, Steven; Rebecca Rubenstein
Subject: Drinks Americas

Dan, we have been told by our bank that all funds will be available for distribution tomorrow (\$90,000). Unless we are informed otherwise, once we have received the signed documents from the Company we will distribute the funds as follows:

\$9,000 to Sloan
\$81,000 to the Company

Please confirm.

Mark F. Coldwell, Esq.
LITTMAN KROOKS, LLP
655 Third Avenue
New York, NY 10017
Tel: (212) 490-2020
Fax: (212) 490-2990

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